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1 THE WITNESS: Thank you.
2 THE EXAMINER: Okay. Yes, now, your
3 education?
4 THE WITNESS: Right. So you'd like me
5 to start with my university degree?
6 BY MR. BLEICHMAR:
7 Q. Please.
8 A. My first degree is a bachelor of
9 science in agriculture with honors in plant
10 protection from the Punjab Agricultural University
11 in India. I then have a masters in agricultural
12 economics from the University of London, which is
13 a -- a now defunct college called Wye College.
14 I -- do you want me to go into
15 professional qualifications as well?
16 Q. Yes, please.
17 A. I'm a chartered accountant and a
18 fellow of the Institute of Chartered Accountants
19 in England and Wales. I'm a licensed insolvency
20 practitioner. I'm a fellow of the
21 Securities Institute.
22 I think that probably -- oh, and I'm also
23 a fellow of the Association of Business Recovery
24 Professionals, and I think that probably covers
25 the -- the lot.

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1 Q. When did you receive your degree
2 from the university in -- in India?
3 A. I --
4 Q. The year.
5 A. I graduated in 1982, I believe.
6 Q. And when did you receive your degree
7 from the University of London?
8 A. That was the end of '83.
9 Q. You also mentioned that you are a
10 chartered accountant. Is there a license that
11 accompanies that -- that charter?
12 A. Well, I'm a chartered accountant,
13 and I passed exams to attain the charter.
14 Q. When did you take those exams?
15 A. I mean, I -- I have a practising
16 certificate as well, not that I actually use it,
17 but I do have one.
18 Q. So you could actually work as an
19 accountant; is -- is that correct?
20 A. Oh, yes. Yes.
21 Q. And when did you obtain that
22 charter?
23 A. I obtained that charter in '88,
24 if I recall correctly -- or it might have been
25 '87, I'm not quite sure, but --

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1 Q. Late '80s, roughly?
2 A. -- around then, yes.
3 Q. When did -- tell me about your
4 professional career, in general terms, prior to
5 arriving to Optimal, or Santander?
6 A. That's quite easy. I spent almost
7 16 years at Deloitte. I did my training with --
8 with Deloitte -- it was Touche Ross at the time.
9 I was in the -- the audit division, to start off
10 with. I then moved over to the insolvency
11 practice, which, within Touche Ross, was called
12 corporate recovery.
13 I was involved with a number of blow-ups
14 in the '80s, insolvency problems -- Maxwell,
15 Polly Peck, BCCI, to name a few.
16 I then became the national insolvency
17 technical manager for Deloitte, so I looked at
18 technical issues, and if there were problems or
19 risk management issues, I was involved with that.
20 I then transferred over to the practice
21 protection team for Deloitte. So when Deloitte
22 were sued or had a problem or a risk issue, then
23 I was part of the team that helped resolve those
24 particular issues.
25 Towards the end of '99, I met somebody

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1 who suggested -- I think I should also, just to
2 put in context, I'm an Indian national, so I was
3 here primarily on a work permit, and by then,
4 of course, I had become a resident in the UK.
5 And somebody suggested that it might be
6 time for me to look outside Deloitte, having
7 spent 16 years there, and I got talking to an
8 organization that had just been bought by UBS
9 called Global Asset Management, and I joined them
10 to develop what at that time was a fairly
11 fledgling area, which was operational due
12 diligence, and I was probably one of the first
13 practitioners in developing operational due
14 diligence in hedge funds.
15 And we then created a fairly large team,
16 I think it's probably -- probably still is one of
17 the largest teams of independent due diligence
18 experts as part of a fund-of-funds team, and I was
19 then approached by Optimal, Santander, to really
20 sort of recreate something similar with them.
21 Q. There was a lot there in your
22 answer. Let me try to break it up into smaller
23 pieces.
24 You mentioned that you worked for
25 16 years at Deloitte; correct?

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<p>1 A. Yes.</p> <p>2 Q. Is that approximately from 1983,</p> <p>3 mid 1980s, through 1999?</p> <p>4 A. So it was February 1984 to</p> <p>5 February 2000. And the only reason I remember the</p> <p>6 February is just the -- the coincidence of the</p> <p>7 month.</p> <p>8 Q. And you first started working in the</p> <p>9 audit division; is that right?</p> <p>10 A. Yes, that's right.</p> <p>11 Q. At -- at one point, if I understood</p> <p>12 you correctly, you moved to the practice</p> <p>13 protection team?</p> <p>14 A. Yes.</p> <p>15 Q. Was that considered an elite team,</p> <p>16 a -- was that considered a promotion for you?</p> <p>17 A. Yes. The practice protection team</p> <p>18 was three people: it was headed up by a partner</p> <p>19 who was on the executive board; there was a</p> <p>20 director; and there was myself. So we were the</p> <p>21 UK practice protection team. There were other</p> <p>22 people who were involved internationally. But we</p> <p>23 basically looked after problems as and when they</p> <p>24 arose.</p> <p>25 So, I mean, as an example, when the</p>	<p>1 A. I was head of operational</p> <p>2 due diligence.</p> <p>3 Q. And could you tell me a little bit</p> <p>4 about what that entailed?</p> <p>5 A. Well, essentially, it was creating a</p> <p>6 team to implement procedures around operational</p> <p>7 due diligence for investments into hedge funds,</p> <p>8 and that was a -- a procedure that had not -- it</p> <p>9 was an area that GAM wished to develop, and that's</p> <p>10 what they hired me to do.</p> <p>11 Q. And you were based out of London;</p> <p>12 is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And what was your title at GAM?</p> <p>15 A. I was head of operational</p> <p>16 due diligence.</p> <p>17 Q. Head of operational -- all right.</p> <p>18 After July 2005, where did you go?</p> <p>19 A. I went to Banco Santander, the</p> <p>20 London branch. They were my employer. But my</p> <p>21 responsibilities were in relation to Optimal</p> <p>22 Investment Services, OIS, which is a Geneva-based</p> <p>23 organization, which is a subsidiary of</p> <p>24 Santander's.</p> <p>25 Q. So, today, if we refer to Optimal</p>
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<p>1 decision was made to sue the Bank of England on</p> <p>2 BCCI, some of the issues around that were issues</p> <p>3 that came to our team, we would have looked at</p> <p>4 that, and then determined sort of how we</p> <p>5 proceeded.</p> <p>6 Q. Do you -- and why were you selected,</p> <p>7 or what is your understanding as to why you were</p> <p>8 selected to join the practice protection team?</p> <p>9 A. Well, I guess most people who get to</p> <p>10 know me -- and I -- I always feel it's unmerited,</p> <p>11 but they always comment about my attention to</p> <p>12 detail, and -- and also the fact that, generally,</p> <p>13 once I tend to get my teeth into something, I tend</p> <p>14 not to let go.</p> <p>15 Q. What was your final position when</p> <p>16 you left Deloitte, your --</p> <p>17 A. I was a senior manager.</p> <p>18 Q. After Deloitte, you -- you said you</p> <p>19 went to Global Asset Management; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you were there from 1999 until</p> <p>22 when? Excuse me, from February 2000 until when?</p> <p>23 A. I was there until July 2005.</p> <p>24 Q. And what was your position at</p> <p>25 Global Asset Management?</p>	<p>1 Investment Services as -- as "OIS", we both know</p> <p>2 what we're referring to; is that fair?</p> <p>3 A. Yes.</p> <p>4 Q. And what was your -- what was the</p> <p>5 title of your position when you began working at</p> <p>6 Banco Santander?</p> <p>7 A. Well, when I started, I think I was</p> <p>8 called senior vice-president, and I think --</p> <p>9 I mean, it wasn't a promotion, it was just a</p> <p>10 redesignation of everyone's titles, but -- so</p> <p>11 I was senior vice-president and chief risk</p> <p>12 officer, I think is the -- the way I was sort of</p> <p>13 brought in.</p> <p>14 And I think, during the course of that</p> <p>15 year, or maybe it was the following year, I can't</p> <p>16 quite remember which, the "senior vice-president"</p> <p>17 dropped and the -- the SVPs, as they were called,</p> <p>18 became managing directors, so it was a sort of</p> <p>19 redesignation. But my primary function was as</p> <p>20 chief risk officer.</p> <p>21 Q. And who hired you at -- from</p> <p>22 Banco Santander?</p> <p>23 A. Manuel Echeverria.</p> <p>24 Q. And how did you meet</p> <p>25 Manuel Echeverria?</p>

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<p>1 A. Well, actually, through Heidrick & 2 Struggles. They were the headhunters who 3 approached me, and they set up a meeting. 4 So I had dinner with him, and that's how the 5 conversation started.</p> <p>6 Q. And how did -- what did he say to 7 you at that meeting? What did you discuss?</p> <p>8 A. What did we discuss? Well, he said 9 that Optimal didn't really have a very strong 10 operational due diligence capability; that that is 11 something that Santander were looking to develop; 12 that they had heard about what I had done at 13 Global Asset Management, and that that is 14 something that they would like to recreate at -- 15 at Optimal.</p> <p>16 Q. Did he explain -- or do you have an 17 understanding what he meant by the fact that 18 Optimal didn't have a very strong operational 19 due diligence capability?</p> <p>20 A. Yes.</p> <p>21 MR. DANON: Object to the form of the 22 question.</p> <p>23 THE EXAMINER: You answered.</p> <p>24 THE WITNESS: Sorry, I should have 25 waited, shouldn't I?</p>	<p>1 who understands the structure of the business, so 2 it's looking at the detail of how, for example, 3 trades are processed, how they're recorded, 4 who's involved in the processes, how they're 5 reported, who assesses them, and to form a view on 6 the risks that might be associated with it.</p> <p>7 Q. The meeting with -- with Manuel, 8 when did that take place, approximately?</p> <p>9 A. Gosh. Well, I joined them in July, 10 so it was probably April or May. It might have 11 been a bit earlier, but 2005. Sort of early 2005 12 is probably the best I can put on it as a date.</p> <p>13 Q. And the meeting was here in London?</p> <p>14 A. Yes.</p> <p>15 Q. And what was your impression of the 16 proposal at the time?</p> <p>17 A. Well, it was an attractive proposal. 18 It was an opportunity to create something that I'd 19 done at -- at GAM again, and it was a promotion, 20 in effect, so it was career enhancing, and 21 attractive as a consequence.</p> <p>22 Q. Did you have any general 23 expectations at the time of what your employment 24 would be like?</p> <p>25 A. Yes.</p>
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<p>1 THE EXAMINER: That's -- that's all 2 right.</p> <p>3 THE WITNESS: Sorry, do you mind just 4 repeating that again?</p> <p>5 BY MR. BLEICHMAR:</p> <p>6 Q. Sure. Did he explain or do you have 7 an understanding about what Manuel meant by the 8 fact that Optimal didn't have a very strong 9 operational due diligence capability?</p> <p>10 A. I mean, essentially, the operational 11 due diligence that happened at OIS was something 12 that the investment analysts did, and they 13 obviously were specialists in investments, 14 rather than in operations. So that was something 15 that they covered as part of their analysis, but 16 it wasn't a dedicated team.</p> <p>17 So what he wished to do was create a 18 dedicated team with sort of appropriately 19 qualified professionals in it.</p> <p>20 Q. And what is -- you -- you -- strike 21 that.</p> <p>22 What is the difference between a 23 specialist in investments and a professional that 24 specializes in operations?</p> <p>25 A. Well, it's -- it's really somebody</p>	<p>1 Q. And what were those?</p> <p>2 A. Well, what -- what any employee 3 moving into new employment would expect. 4 You know, it was an opportunity to create 5 something new. I was hoping I would be given a 6 fairly free hand in doing it, and -- yes, so it 7 was -- it was an exciting prospect.</p> <p>8 Q. Was there a long period of 9 negotiations, in terms of your employment, after 10 that meeting?</p> <p>11 A. I don't know what is -- what is 12 "long". I mean, there was obviously a process of 13 negotiation.</p> <p>14 I think the -- the main issue, actually, 15 was that -- I think Optimal had originally 16 envisaged that I would be based in Geneva. 17 That is not something I was prepared to do.</p> <p>18 THE EXAMINER: Sorry. I -- I missed 19 your answer: Optimal were initially?</p> <p>20 THE WITNESS: Optimal wished that I was 21 based out of Geneva, but that was not something 22 that I wished.</p> <p>23 So we -- we reached an arrangement 24 whereby I would typically fly out on a Tuesday 25 morning and spend Tuesday, Wednesday, Thursday</p>

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<p>1 at -- in Geneva, and then fly back on a Thursday, 2 and the idea was that Mondays and Tuesdays would 3 be spent, effectively, establishing a London 4 office and a London presence for OIS through the 5 Santander branch. 6 BY MR. BLEICHMAR: 7 Q. Did you have an understanding as 8 to -- let me strike that. 9 Who did you report to when you first 10 started in July of 2005 at Banco Santander? 11 A. Well, my direct report was to 12 Manuel Echeverria, as the CEO. 13 Q. Did you have any other reports? 14 Anybody at Banco Santander? 15 A. Well, there was a dotted line report 16 to -- I think the gentleman's name -- I'm not 17 quite sure of this -- is Pepe Mercado, who was 18 Amadeo Reynes' -- Pascual Reynes' boss, and he was 19 head of -- he was head of group risk. 20 And I say it was a dotted line report 21 because -- I mean, if I recall correctly, 22 certainly there is nothing in my -- my contract in 23 terms of a reporting line there, but it was always 24 understood that I would have conversations with 25 the group on -- on risk issues, and I -- I mean,</p>	<p>1 strengthen and develop, so the discussions were 2 really in that context. 3 Q. You mentioned that you had a -- a 4 contract with Banco Santander when you started 5 working? 6 A. Yes. 7 Q. Do you have a copy of that contract? 8 A. Yes. 9 Q. Would you be willing to provide us a 10 copy of that contract? 11 A. I think that's for -- 12 THE EXAMINER: Can't that -- 13 MR. CAULFIELD: Might I interject? 14 THE EXAMINER: -- be sorted out directly 15 between you and the defendant? 16 MR. BLEICHMAR: Sure. 17 THE EXAMINER: Yes. 18 BY MR. BLEICHMAR: 19 Q. Was that contract ever amended? 20 A. Actually, I think it was, because 21 there was a -- there was an incentive plan, 22 a compensation incentive plan, that was added 23 2006, maybe. Again, I can't quite remember the 24 dates, but I think that was the only sort of 25 additional variation that there might have been to</p>
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<p>1 I think, to a large extent, my appointment had 2 been driven by group risk having concerns that 3 the -- the risk management function wasn't strong 4 enough at Optimal and that it really needed 5 enhancing and developing. 6 So I think they had a -- an interest 7 because of that as well. 8 Q. How did you come to understand that 9 group risk had concerns about the risk 10 management -- that the risk management function 11 wasn't strong enough? 12 A. I think Manuel told me. 13 Q. Did he give you any more details on 14 that? 15 A. Well, yes. I mean, it -- it was 16 fairly common knowledge at -- I mean, when you 17 look back to 2005, there were very few people who 18 actually did operational due diligence. It was 19 a -- if you like, a unique selling point for a 20 fund-of-fund business. 21 So -- you know, GAM had done -- done it, 22 and I think Santander wanted to do something 23 similar. 24 So I think they recognized the fact 25 that -- that that was an area that they wished to</p>	<p>1 the contract. 2 Q. A little while before you mentioned 3 group risk. 4 A. Yes. 5 Q. Could you describe what you meant by 6 group risk? 7 A. Well, Santander had -- had its own 8 risk team, and they were obviously looking at 9 various subsidiaries and -- and risk across those 10 subsidiaries, of which Optimal was one. 11 Q. And the risk team that Santander 12 had, where was it based? 13 A. It was based in Madrid. 14 Q. So Pepe Mercado was based in Madrid? 15 A. That's right. 16 Q. And did you travel to Madrid to meet 17 with Pepe Mercado? 18 A. Yes, I met him twice. 19 Q. When did you meet him? 20 A. I think both meetings were in 2006. 21 One meeting might have been in 2007. I can't 22 quite remember the dates now. 23 Q. And what was the purpose of those 24 meetings? 25 A. Well, (a) to meet him; (b) to talk</p>

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<p>1 about sort of what was happening on operational 2 risk and what we were doing on the risk side and 3 to develop that a little bit more.</p> <p>4 Q. Going back to your contract for a 5 moment, did -- does your contract generally 6 specify your areas of responsibility and duties at 7 Banco Santander?</p> <p>8 A. I think it did, yes.</p> <p>9 Q. And what did it say, to the best of 10 your recollection?</p> <p>11 A. I think, essentially, that I was 12 responsible for operational risk and -- and that 13 I reported in to Manuel.</p> <p>14 Q. Did you have an understanding as to 15 whether, as head of operational risk, you had the 16 power to veto an investment?</p> <p>17 A. I knew I didn't have the power to 18 veto. That is something that came with my 19 subsequent job.</p> <p>20 Q. Did you discuss that with Manuel 21 prior to your employment?</p> <p>22 A. Yes.</p> <p>23 Q. And what did you discuss?</p> <p>24 A. Well, we talked about sort of how it 25 would operate, because even at GAM I didn't have</p>	<p>1 essentially, the senior people at -- at Optimal. 2 So it was Manuel; Hugh Burnaby-Atkins; 3 Caron Bastianpillai; Amit Popat, who was, again, 4 a marketing person based out of London; 5 Toby Gauvain, who was head of marketing, generally 6 based out of Geneva; Tasneem Jeevanjee, who was 7 the COO; and Esteban Estevez, who was, again, a 8 marketing person.</p> <p>9 Q. And did the management committee 10 have veto power over investments?</p> <p>11 A. I don't think in the way that 12 you're thinking. I mean, obviously, as a 13 management committee, it had a veto power of 14 what it thought -- you know, it thought was not 15 acceptable.</p> <p>16 So, as a committee, it could determine 17 how we carried out certain things, but I don't 18 think in terms of the -- in terms of the formal 19 veto power, I don't believe that that was 20 necessarily what it had.</p> <p>21 I think that would be more sort of 22 investment committee that would have exercised the 23 veto.</p> <p>24 Q. What is the difference between 25 the management committee and the investment</p>
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<p>1 the power of veto there, I just had an extremely 2 loud voice, and -- and I made sure that people 3 heard it.</p> <p>4 I guess I was more relaxed about it, 5 in the context of Optimal, because I was a member 6 of the management committee, and, as part of that, 7 obviously, I had a say and I could reflect 8 concerns there.</p> <p>9 So, yes, you know, we talked about it, 10 but I accepted the fact that I wouldn't have the 11 power of veto.</p> <p>12 Q. Did you ask to have the power to 13 veto?</p> <p>14 A. Well, I said that that would be my 15 preference. That is something that an operational 16 due diligence person would always want to keep. 17 But it was something that he felt wouldn't be 18 appropriate, and it was something I was prepared 19 to accept at the time, given that it was actually 20 no different to what I'd already experienced.</p> <p>21 Q. You said you were a member of the 22 management committee; correct?</p> <p>23 A. Yes.</p> <p>24 Q. What was the management committee? 25 A. The management committee was,</p>	<p>1 committee?</p> <p>2 A. Well, the investment committee was 3 composed of the investment analysts, so they were 4 looking at investment decisions, and that was 5 their role.</p> <p>6 Q. Were you a member of the investment 7 committee?</p> <p>8 A. Yes, I attended those.</p> <p>9 Q. Who -- who were the members of the 10 investment committee?</p> <p>11 A. The analysts, so the investment 12 analysts. Do you want me to go through the names 13 that I can remember, or --</p> <p>14 Q. Well, let's narrow it down. 15 You're obviously familiar with a fund called 16 Optimal SUS; correct?</p> <p>17 A. Yes.</p> <p>18 Q. With respect to Optimal SUS, who 19 were the members of the investment committee?</p> <p>20 A. Well, Optimal SUS was quite a narrow 21 area, in terms of the analysts, so that was 22 Hugh Burnaby-Atkins, Jonathan Clark, 23 Manuel Echeverria, myself.</p> <p>24 So, I mean, you know, other people got 25 involved, but it was really peripheral, so you</p>

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<p style="text-align: right;">Page 34</p> <p>1 would have people like Cecilia Alvarez -- I hope 2 I've got her name -- her surname correctly, but -- 3 but Cecilia would sometimes get involved. But, 4 I mean, the hats were slightly different, so she 5 would have more of a wealth management hat. So 6 she would -- she would be looking in terms of 7 client relationships, so she might sort of come in 8 and say -- maybe somebody was looking for capacity 9 within SUS, so she might come in at the request 10 and then get involved in some of the discussions 11 there. 12 But, primarily, in terms of the -- the 13 investment rationale, that was Hugh Burnaby-Atkins 14 and Jonathan Clark. 15 Q. Was the investment committee a 16 formal committee that actually voted on -- on its 17 decisions? 18 A. Yes. 19 Q. And how often did it -- 20 A. I don't -- let me just make sure, 21 again, we are clear on that. I don't think it 22 sort of formally necessarily voted, because 23 I don't believe -- I certainly can't recall it. 24 It might have been the case. But I don't recall, 25 for example, you know, formal minutes of -- of a</p>	<p style="text-align: right;">Page 36</p> <p>1 at which point I then had to -- if I had concerns 2 that weren't being addressed, then I dug my toes 3 in, and it did happen. 4 Q. Which investments specifically 5 did -- did you say no to? 6 A. Is that all right for me to answer? 7 Q. Yes. 8 THE EXAMINER: Does anyone have any 9 problems with that? 10 MR. DANON: No. 11 THE WITNESS: Okay. Well, there was 12 MotherRock that I said no to. 13 THE EXAMINER: Sorry? 14 THE WITNESS: MotherRock. "Mother" and 15 then "Rock", together. That is an investment 16 which we said no to. 17 UBS Dillon Read was another investment 18 where we said no. That is one that probably gave 19 me an extremely hard time, in terms of my 20 relationship with the investment analysts, because 21 what they were saying was, effectively, that I was 22 saying no to the number one money manager in the 23 world, but I didn't feel that it looked after the 24 interests of our -- our clients, and so I didn't 25 believe that it was an acceptable investment to</p>
<p style="text-align: right;">Page 35</p> <p>1 vote being taken. 2 Q. But your understanding is that the 3 investment committee had veto power over the 4 investment in Optimal SUS? 5 A. Yes, and -- and ultimately the 6 management committee as well, but it was not a 7 formal -- so they wouldn't have looked at every 8 investment decision, for example, but if something 9 had been escalated, and typically it would be 10 somebody like me who would escalate it, then, yes, 11 it would get discussed there and, if necessary, 12 they would then have the power to -- to say no. 13 Q. In your experience, did the 14 investment committee ever veto an investment? 15 A. Well, yes, they did, because there 16 were investments that I said no to. So, in -- in 17 that respect, yes, they did veto. 18 Was it a straight cut-and-dried, 19 you know, "No, we will not do it", or, "Yes, we 20 will do it"? It tended not to be. 21 I think the way it -- it worked was, 22 essentially, that if we had concerns, the -- the 23 investment would get cut short before it even got 24 to the stage of a vote, unless the analysts were 25 absolutely hell-bent on a particular investment,</p>	<p style="text-align: right;">Page 37</p> <p>1 make. 2 So they're two examples. There were 3 probably more, but I cannot remember them now. 4 BY MR. BLEICHMAR: 5 Q. Without remembering specific names, 6 generally, do you have a recollection of how many 7 investments you said no to while you were employed 8 at Banco Santander? 9 A. Well, as I explained to you, 10 in terms of the process, most of these would fall 11 away as the concerns came out, so it was very rare 12 that you actually got to a -- a position. 13 I mean, MotherRock, actually, if you 14 think about it, never really proceeded right to 15 the very end, because what had happened was -- 16 I think the analysts had prepared a recommendation 17 on it. I had just got back from New York on a 18 visit, if I remember correctly, and MotherRock had 19 their COO, I think, who was in the -- in the -- in 20 the UK, and one of the analysts called me and 21 said, "Look, this chap is in London. Can you go 22 and meet him and -- and talk to him and see what 23 you think?", and I then had that conversation. 24 I went and met him somewhere in the afternoon for 25 a couple of hours, and off the back of that, we</p>

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<p>1 basically said no.</p> <p>2 I mean, I -- I then did go -- because</p> <p>3 the -- again, the analysts weren't going to quite</p> <p>4 let go of it completely. So I then got sent off.</p> <p>5 So when I was -- I think they were Houston-based.</p> <p>6 So I'd gone to see a couple of other managers in</p> <p>7 Houston, so I went to see them again, but it was</p> <p>8 the same issues.</p> <p>9 Q. And why did you say no to</p> <p>10 MotherRock?</p> <p>11 A. Well, again, there were issues,</p> <p>12 if I remember correctly -- and this is not</p> <p>13 something that I -- I haven't had -- I could well</p> <p>14 be confusing it with other things, but one of the</p> <p>15 issues was the way they actually handled the</p> <p>16 trading, and there were also issues around</p> <p>17 leverage and the extent to which they could</p> <p>18 actually control the trading and know their total</p> <p>19 exposure, and I was concerned about that.</p> <p>20 And, as you will probably know, history</p> <p>21 tells that that assessment was correct.</p> <p>22 Q. I am not familiar with MotherRock.</p> <p>23 Why does history tell that that assessment was</p> <p>24 correct?</p> <p>25 A. Well, they failed.</p>	<p>1 conduct operational due diligence on MotherRock?</p> <p>2 A. Well, this would have been in 2005,</p> <p>3 I -- I suspect.</p> <p>4 Q. With respect to UBS Dillon Read,</p> <p>5 could you tell me about why you said no to the</p> <p>6 investment in UBS Dillon Read?</p> <p>7 A. Yes. Again, we'd -- in fact, the --</p> <p>8 the operational due diligence review on that</p> <p>9 was done by a colleague of mine, and -- I mean,</p> <p>10 the system that I've always used on operational</p> <p>11 risk is that, regardless of whether it's me or</p> <p>12 somebody else, when we do a report, you always</p> <p>13 peer review it, so you always get somebody else to</p> <p>14 read it and tell you what they think, and the</p> <p>15 approach that I've always taken is that -- that,</p> <p>16 essentially, any member of the operational</p> <p>17 due diligence team should be able to turn around</p> <p>18 and say, "That's a load of rubbish. I don't</p> <p>19 agree, for X, Y, Z reason", and then we would</p> <p>20 debate it through, because -- and it is one of the</p> <p>21 reasons why it is important, in terms of having</p> <p>22 a -- an operational due diligence team, to have</p> <p>23 people with different types of experience on that</p> <p>24 team.</p> <p>25 And so it -- so it was done by somebody</p>
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<p>1 Q. And how did they fail?</p> <p>2 A. For those reasons.</p> <p>3 Q. Can you describe them in a little</p> <p>4 more detail?</p> <p>5 A. Well, I mean, essentially, they --</p> <p>6 they weren't able to keep on top of the trades, as</p> <p>7 I understand it, and so eventually the -- the</p> <p>8 operation closed down, so the fund closed down.</p> <p>9 Q. When you say they couldn't keep on</p> <p>10 top of the trades, for us non-financial</p> <p>11 professionals --</p> <p>12 A. Well, it was -- it was tracking the</p> <p>13 exposure --</p> <p>14 Q. -- if you could explain that?</p> <p>15 A. It was tracking the exposure and</p> <p>16 tracking the extent to which they were leveraged,</p> <p>17 and I think there was an overexposure, so they</p> <p>18 made huge losses, and as a result of those losses</p> <p>19 they closed down.</p> <p>20 Q. And when did this approximately</p> <p>21 happen? When did they close down?</p> <p>22 A. It must have been during my time</p> <p>23 when I was at Optimal, but I can't remember the</p> <p>24 date.</p> <p>25 Q. And approximately when did you</p>	<p>1 else. Just -- that was nothing sort of</p> <p>2 intentional, it was just a quirk of the</p> <p>3 allegations. And when I reviewed that report, one</p> <p>4 of the things that struck me on it was that there</p> <p>5 was an intermediate master fund.</p> <p>6 So -- so, generally, in funds you've got</p> <p>7 a feeder fund which then feeds into a master fund</p> <p>8 where all the assets are held, generally offshore,</p> <p>9 and the manager then manages the master fund.</p> <p>10 Now, what had -- what had happened here</p> <p>11 was that there was a structure, and in that</p> <p>12 structure there was a -- a mini master that was</p> <p>13 sort of sitting in between the feeder and the</p> <p>14 master, and this particular master held the --</p> <p>15 THE EXAMINER: Which one? The mini</p> <p>16 master or --</p> <p>17 THE WITNESS: The mini master. So the</p> <p>18 mini master basically held the investments that</p> <p>19 UBS were making into the fund.</p> <p>20 Now, essentially, what happened was, the</p> <p>21 reason why they'd decided to launch this fund --</p> <p>22 and, again, on the basis that I actually recall</p> <p>23 this correctly, and I -- I may have got certain --</p> <p>24 some of the facts not entirely right here, but,</p> <p>25 if I remember correctly, the reason that UBS</p>

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<p>1 decided that they wanted another fund was because</p> <p>2 they wanted to take some of the risk off balance</p> <p>3 sheet, but they still wanted to have their own</p> <p>4 proprietary trading and interest and proprietary</p> <p>5 exposure to that particular strategy.</p> <p>6 So what I was concerned about was that</p> <p>7 this mini master would not only be prime broking</p> <p>8 for that particular investment, but would also</p> <p>9 have first sight of all the trading that was going</p> <p>10 on, and I just felt that there was a major</p> <p>11 conflict of interest there and that it didn't</p> <p>12 really look after our interests as investors, and,</p> <p>13 therefore, I was not happy with it.</p> <p>14 But that was -- that was a battle that</p> <p>15 I had to fight, because the investment analysts</p> <p>16 were not happy about it.</p> <p>17 BY MR. BLEICHMAR:</p> <p>18 Q. What do you mean by "prime broking"?</p> <p>19 A. Well, a prime broker is primarily a</p> <p>20 broker who handles trades on behalf of a hedge</p> <p>21 fund, and, typically, a prime broker is the broker</p> <p>22 that will settle and clear the trades that other</p> <p>23 executing brokers may be executing on behalf of</p> <p>24 the fund, but there is a central party that</p> <p>25 effectively acts for clearing and settlement,</p>	<p>1 probably Sebastien Poiret, he was involved;</p> <p>2 probably Jonathan as well. But I -- I can't</p> <p>3 really remember. It's a possibility.</p> <p>4 Q. And did they fight your decision to</p> <p>5 say no to that fund?</p> <p>6 A. Hugh certainly did, yes.</p> <p>7 Q. In what way?</p> <p>8 A. Well, as I've just told you, he said</p> <p>9 I couldn't expect to have any credibility with the</p> <p>10 investment analysts if I was saying no to</p> <p>11 investing with the number one money manager in the</p> <p>12 world.</p> <p>13 Q. And what was -- who made the final</p> <p>14 decision?</p> <p>15 A. Manuel Echeverria.</p> <p>16 Q. And what did he decide to do?</p> <p>17 A. Not to invest.</p> <p>18 Q. And what is your understanding as to</p> <p>19 why Manuel made that decision?</p> <p>20 A. Well, because of my concerns --</p> <p>21 MR. DANON: Object to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: Sorry.</p> <p>24 MR. DANON: Go ahead.</p> <p>25 THE EXAMINER: Go ahead.</p>
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<p>1 so the executing brokers will give up the trade to</p> <p>2 the prime broker, and so the prime broker would</p> <p>3 then essentially know what trades had occurred.</p> <p>4 Q. And why was it a concern of yours</p> <p>5 that the mini master was doing -- was the prime</p> <p>6 broker?</p> <p>7 A. Because there's a conflict of</p> <p>8 interest.</p> <p>9 Q. In what sense?</p> <p>10 A. Well, the prime broker was trading</p> <p>11 as an investor in the fund, but was also</p> <p>12 prime broker. Well, if you are looking at things</p> <p>13 like credit risk, you're going to be looking after</p> <p>14 your interests first.</p> <p>15 Q. You mentioned that the investment</p> <p>16 analysts very much wanted to invest in the</p> <p>17 UBS Dillon Read fund; correct?</p> <p>18 A. Sorry?</p> <p>19 Q. You mentioned that the investment</p> <p>20 analysts were very interested in -- in investing</p> <p>21 in UBS Dillon Read; correct?</p> <p>22 A. Yes.</p> <p>23 Q. And who were those investment</p> <p>24 analysts?</p> <p>25 A. Hugh Burnaby-Atkins; I think</p>	<p>1 THE WITNESS: Because of my concerns.</p> <p>2 He was very unhappy about it, about having to take</p> <p>3 that decision, that he decided that he wasn't</p> <p>4 going to go against it.</p> <p>5 BY MR. BLEICHMAR:</p> <p>6 Q. What type of fund specifically</p> <p>7 was -- was this UBS Dillon Read fund?</p> <p>8 A. I think it might have gone into the</p> <p>9 arbitrage fund, but, again, I'm not sure.</p> <p>10 Q. And could you describe generally</p> <p>11 what that means, "into the arbitrage fund"?</p> <p>12 A. Well, it was just -- it was a</p> <p>13 trading strategy. An arbitrage was one of the</p> <p>14 trading strategies.</p> <p>15 Q. Do you recall which specific trading</p> <p>16 strategy that fund employed?</p> <p>17 A. Arbitrage.</p> <p>18 Q. What type of arbitrage?</p> <p>19 A. The whole range: so you could have</p> <p>20 convertible arbitrage, stat arb.</p> <p>21 Q. Are you familiar with the term</p> <p>22 "split strike conversion strategy"?</p> <p>23 A. I am, yes.</p> <p>24 Q. I need to ask those questions for</p> <p>25 evidentiary reasons.</p>

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<p>1 A. Yes. Yes, that's fine.</p> <p>2 Q. Is it your understanding that the</p> <p>3 split strike conversion strategy is a type of</p> <p>4 arbitrage?</p> <p>5 MR. DANON: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Do I go ahead and answer?</p> <p>8 THE EXAMINER: You can answer.</p> <p>9 THE WITNESS: Well, I don't know</p> <p>10 specifically whether it's a form of arbitrage.</p> <p>11 I don't know.</p> <p>12 BY MR. BLEICHMAR:</p> <p>13 Q. How would you characterize the</p> <p>14 split strike conversion strategy, in terms of</p> <p>15 general investment strategy?</p> <p>16 THE EXAMINER: You mean put it into --</p> <p>17 put it into a category of investment decisions?</p> <p>18 MR. BLEICHMAR: Correct.</p> <p>19 THE WITNESS: U.S. equity, probably,</p> <p>20 because all that -- all that was happening was</p> <p>21 that it was -- they were hedging it. So they were</p> <p>22 just hedging U.S. equity exposure.</p> <p>23 BY MR. BLEICHMAR:</p> <p>24 Q. Would the description of</p> <p>25 "relative value" also be appropriate for the</p>	<p>1 Q. Do you see that the cover page</p> <p>2 appears to be an email from Jonathan Clark to you,</p> <p>3 dated July 28, 2005?</p> <p>4 A. Yes.</p> <p>5 Q. And do you see that it includes a</p> <p>6 number of attachments?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have any reason to believe</p> <p>9 that you did not receive this document?</p> <p>10 A. No. I'm -- I'm pretty sure I did.</p> <p>11 Q. And does this document generally</p> <p>12 appear to be in the same condition as when you</p> <p>13 first received it?</p> <p>14 A. I really wouldn't have a clue.</p> <p>15 I can't remember.</p> <p>16 Q. Any reason to dispute the</p> <p>17 authenticity of this document?</p> <p>18 A. No.</p> <p>19 Q. Do you have a specific recollection</p> <p>20 whether you received this document?</p> <p>21 A. No.</p> <p>22 Q. But this is the type of document</p> <p>23 that you generally would have received while you</p> <p>24 were employed at Banco Santander; correct?</p> <p>25 A. Yes.</p>
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<p>1 split strike conversion strategy?</p> <p>2 A. Possibly, yes.</p> <p>3 Q. And -- and why would that be?</p> <p>4 A. Well, again, because the manager was</p> <p>5 taking decisions as to when he entered and -- and</p> <p>6 left the market.</p> <p>7 Q. And why is making decisions as to</p> <p>8 when he entered and left the market be -- could be</p> <p>9 described as a relative value strategy?</p> <p>10 A. Because he was looking at the value</p> <p>11 of the index at that particular point in time.</p> <p>12 MR. BLEICHMAR: I'm going to mark as</p> <p>13 exhibit number 1 a document bearing Bates stamps</p> <p>14 406681 through 6700.</p> <p>15 (Exhibit 1 marked for identification.)</p> <p>16 BY MR. BLEICHMAR:</p> <p>17 Q. Mr. Jaitley, I'm going to ask you a</p> <p>18 series of questions that are just for the purposes</p> <p>19 of establishing the authenticity of the document.</p> <p>20 We may go through them quite a bit today, and they</p> <p>21 may seem very obvious to you, but --</p> <p>22 A. No, that's fine.</p> <p>23 Q. -- they may be necessary. Do you</p> <p>24 recognize this document?</p> <p>25 A. I've seen many like it.</p>	<p>1 Q. July 28, 2005. Is that</p> <p>2 approximately the time when you first became</p> <p>3 employed by Banco Santander?</p> <p>4 A. Yes.</p> <p>5 Q. And do you have a recollection or an</p> <p>6 understanding as to why Jonathan Clark sent you</p> <p>7 this email?</p> <p>8 A. Well, really to update me on --</p> <p>9 on Optimal SUS.</p> <p>10 Q. And what was your understanding</p> <p>11 about Optimal SUS at that time?</p> <p>12 A. Well, that it was invested in --</p> <p>13 in Madoff.</p> <p>14 I mean, I -- I think it's also -- I mean,</p> <p>15 some of the context of this is that Hugh and</p> <p>16 Jonathan Clark, I think, were quite keen that</p> <p>17 I got up to speed quickly on Madoff, given the</p> <p>18 exposure that -- that Optimal had to it. But</p> <p>19 I think there were different views elsewhere</p> <p>20 within Optimal about whether I should get involved</p> <p>21 or not within this particular entity.</p> <p>22 And at the time when I joined, I think</p> <p>23 the view that was taken by some -- and I think</p> <p>24 Manuel was one of them -- was that Madoff was not</p> <p>25 actually part of my bailiwick, and I essentially</p>

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<p>1 wasn't going to have that because, you know, here 2 was something that was a significant portion of 3 the portfolio that OIS was managing, and 4 I basically said no; you know, this was something 5 that I did need to look at. 6 And -- I mean, this is part of the 7 arguments that were going on at the time, 8 because -- I think Hugh and Jonathan at that 9 particular point were quite keen that I came along 10 and -- and met this -- this chap, and there were 11 others in the organization who were quite keen 12 that I didn't. 13 So -- so there was an argument going on 14 at that particular point as to whether Madoff 15 formed part of my bailiwick or not. 16 Q. You mentioned that Manuel did 17 not want Madoff to be part of your bailiwick. 18 Who else in the organization, in your view, had 19 that position? 20 A. I think it was primarily Manuel. 21 I don't know what the others -- what views the 22 others had. 23 I mean, with Hugh, when I was 24 interviewed -- I met him prior to the -- prior to 25 joining, and one of the questions he asked me,</p>	<p>1 But, you see, again, I think -- I think 2 there was a difference in perception as to what 3 was meant by meeting him, because I -- I think 4 Hugh and Jonathan wanted me to come along for a -- 5 you know, a sort of "Hello, how do you do?" 6 meeting and I wanted to go into a lot more detail, 7 and I think that was part of the issue, was the 8 concern of how that would come across if I was 9 sitting down, rolling up my sleeves, asking 10 questions. 11 Q. Did Manuel tell you he didn't want 12 you involved in Madoff, specifically? 13 A. I think that the way I heard it 14 originally was via Tasneem, who was the COO, but, 15 again, I can't swear to that. I can't really 16 recall. 17 What I can recall is having a discussion 18 with him saying that I needed to go and see him, 19 see Madoff. 20 Q. And when you say "him", are you 21 referring to Manuel? 22 A. No, when I was saying, "I wanted to 23 see him", I was referring to Madoff. 24 Q. I think you said, "What I can recall 25 is having a discussion with him saying that</p>
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<p>1 in fact, was, what did I think of -- of Madoff, 2 to which my response was, "Well, no more than what 3 I've read in the press, so I don't really know", 4 and he said, "Well, you know, that's something 5 we'd like you to look at when you -- when you 6 join, and to help us with". 7 So, you know, on the one hand, I was 8 expecting to -- to get involved with it, so this 9 was -- it would have been perfectly natural and 10 something that I would have expected to receive, 11 but also, at that time, there were discussions 12 going on to say that that was not part of my 13 bailiwick, which I thought was a bit strange, 14 so ... 15 Q. Who did you have those discussions 16 with? 17 A. Manuel. 18 Q. And what did you say to him and what 19 did he say to you? 20 A. Well, I said to him, "As chief risk 21 officer, if I'm meeting investors, and I haven't 22 met the guy who's managing the largest portion of 23 money that -- that Optimal have, it doesn't give 24 me much credibility", so it was important that 25 I -- I did meet him.</p>	<p>1 I needed to go and see him"? 2 A. Oh, I see, I'm sorry. 3 Q. So I was referring to the wrong him? 4 A. So the first "him" is Manuel, and 5 the second "him" is Madoff. 6 Q. So just so the record is clear, you 7 were having a discussion with Manuel saying that 8 you needed to go see Madoff; correct? 9 A. That's right. 10 Q. And what did Manuel say? 11 A. Well, Manuel never gave direct 12 answers if he -- if he was not -- it was something 13 that he was not happy about, and if he was giving 14 an instruction that he was not happy about it, 15 even though he may not have said it directly to 16 me, because I can't remember now, he would have 17 basically avoided giving me a straight answer on 18 it at that particular point. 19 So it was just something that I needed to 20 keep plugging away at, which is what I did. 21 Q. And when did this discussion more or 22 less happen? 23 A. I really can't recall. It was early 24 on. 25 Q. Early on in your employment --</p>

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<p>1 A. Yes.</p> <p>2 Q. -- at Banco Santander?</p> <p>3 A. Yes. I mean, again, to put it in</p> <p>4 context, I eventually met Bernie Madoff in</p> <p>5 February 2006, so that will give you an idea of</p> <p>6 the -- the length of time and, yes, you know, they</p> <p>7 tried to organize meetings in between, but they</p> <p>8 got canceled and then, you know -- but I was still</p> <p>9 trying to push to say, "I need to go and meet</p> <p>10 him".</p> <p>11 Q. Going back to your comment that</p> <p>12 Hugh and -- Hugh Burnaby-Alkins and Jonathan Clark</p> <p>13 wanted you to do a "Hello, how do you do?" type of</p> <p>14 meeting -- do you remember that? Do you remember</p> <p>15 saying that?</p> <p>16 A. Yes.</p> <p>17 Q. And what did you mean by that?</p> <p>18 A. Precisely that: that he didn't --</p> <p>19 I think -- Hugh's approach was very much,</p> <p>20 "Come along to one of our meetings, and then tell</p> <p>21 us afterwards what you thought", whereas the</p> <p>22 meeting for me, if I was doing operational</p> <p>23 due diligence, was to go along and do operational</p> <p>24 due diligence and ask operational due diligence</p> <p>25 questions.</p>	<p>1 THE WITNESS: Yes. I think he was</p> <p>2 concerned that I would spoil a very good</p> <p>3 relationship with somebody that he had capacity</p> <p>4 with.</p> <p>5 BY MR. BLEICHMAR:</p> <p>6 Q. What do you mean by "spoil a very</p> <p>7 good relationship"?</p> <p>8 A. Well, because I would essentially</p> <p>9 not back down if I'd asked a particular question.</p> <p>10 Q. And why do you believe that he</p> <p>11 thought you may spoil a very good relationship?</p> <p>12 A. Well, I think probably the best way</p> <p>13 of describing that is with the instructions that</p> <p>14 I was given prior to the meeting that I had in</p> <p>15 February 2006 with Madoff.</p> <p>16 Manuel had a pre-meeting with Madoff to</p> <p>17 explain to him that I was going to be coming along</p> <p>18 to ask questions. I was also given instructions,</p> <p>19 because I was going to be chaperoned at that</p> <p>20 meeting by Hugh and by Jonathan, and that if they</p> <p>21 determined that I shouldn't push on a particular</p> <p>22 question, then I needed to shut up.</p> <p>23 Q. Did you have the sense that your</p> <p>24 operational due diligence was limited?</p> <p>25 A. Yes.</p>
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<p>1 Q. And when did this become clear to</p> <p>2 you, that you and Hugh had different views of how</p> <p>3 the meetings would be carried out?</p> <p>4 MR. DANON: Object to the form of the</p> <p>5 question.</p> <p>6 THE EXAMINER: You may answer.</p> <p>7 THE WITNESS: I suspect fairly early on.</p> <p>8 I -- I think -- again, it's important to</p> <p>9 understand context here. Investment analysts are</p> <p>10 extremely protective of their relationships.</p> <p>11 That's in -- in the world of hedge funds, that is</p> <p>12 one of the most important things that an</p> <p>13 investment analyst has, and so that is something</p> <p>14 that they protect.</p> <p>15 Now, I'm afraid the questions that --</p> <p>16 that I ask some hedge fund managers view as being</p> <p>17 quite intrusive and untrusting, and it needed to</p> <p>18 be done, as far as I was concerned. So that</p> <p>19 created its own tensions.</p> <p>20 BY MR. BLEICHMAR:</p> <p>21 Q. Do you have an understanding as --</p> <p>22 as to why Manuel didn't want you to get involved</p> <p>23 with Madoff?</p> <p>24 MR. DANON: Object to the form of the</p> <p>25 question.</p>	<p>1 Q. Did -- was your operational</p> <p>2 due diligence ability limited in any other</p> <p>3 investment?</p> <p>4 A. Oh, yes. I mean, the issues that we</p> <p>5 are talking about were not unique to Madoff.</p> <p>6 Q. How do you know that Manuel had a</p> <p>7 pre-meeting with Madoff?</p> <p>8 A. Well, (a) I was told; and (b) he was</p> <p>9 there when I arrived.</p> <p>10 Q. I see. So this pre-meeting</p> <p>11 happened, more or less -- not on the same day that</p> <p>12 you met with Madoff?</p> <p>13 A. Yes, it happened on the same day.</p> <p>14 So he -- I think he left shortly after, and he</p> <p>15 left Jonathan and -- and Hugh to look after me.</p> <p>16 Q. Did you find this out when you</p> <p>17 arrived at Madoff's offices and saw Manuel there?</p> <p>18 A. I can't remember now.</p> <p>19 Q. But you can't remember whether</p> <p>20 Manuel told you, "Rajiv, I will be there before</p> <p>21 you arrive and speak with Madoff. Be aware that's</p> <p>22 going to happen"?</p> <p>23 A. I really can't remember.</p> <p>24 Q. And what is -- what is your</p> <p>25 understanding of what Manuel discussed with Madoff</p>

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<p>1 at this pre-meeting?</p> <p>2 MR. DANON: Object to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: Essentially, what I've</p> <p>5 told you: that, you know, they were developing</p> <p>6 something new, in terms of operational</p> <p>7 due diligence; I was the new guy I shouldn't --</p> <p>8 that he shouldn't be offended by some of the line</p> <p>9 of questioning that I took.</p> <p>10 BY MR. BLEICHMAR:</p> <p>11 Q. And did Manuel tell you that this is</p> <p>12 what he said to Madoff?</p> <p>13 A. I -- I -- I cannot specifically</p> <p>14 recall that he actually said it to me, but that's</p> <p>15 my belief now, so maybe he'd said it to me or</p> <p>16 somebody else said it to me. I can't -- can't</p> <p>17 really remember.</p> <p>18 Q. And you mentioned that</p> <p>19 Hugh Burnaby-Atkins and Jonathan Clark had</p> <p>20 instructions to tell you to stop if you were</p> <p>21 asking questions they did not like; is that more</p> <p>22 or less correct?</p> <p>23 A. Yes.</p> <p>24 Q. And did that happen?</p> <p>25 A. Yes.</p>	<p>1 THE EXAMINER: -- given instructions</p> <p>2 before the meeting.</p> <p>3 THE WITNESS: Well, I mean, one of the</p> <p>4 instructions that I was given -- and, again,</p> <p>5 probably best to give it in terms of context here.</p> <p>6 A manager meeting is actually pretty meaningless.</p> <p>7 I mean, other than actually having somebody face</p> <p>8 to face. If all you are going to do is sit in the</p> <p>9 boardroom and be told what the operations and</p> <p>10 procedures are, well, he could tell you anything,</p> <p>11 so what's the point of that?</p> <p>12 So the real value of a -- of a</p> <p>13 due diligence meeting is, really, to do</p> <p>14 two things, in my view: the first is to walk</p> <p>15 around the office to get a sense of the place;</p> <p>16 and the second is to do what I refer to as a</p> <p>17 walk-through test, which is you go and you choose</p> <p>18 a particular investment off the trading book or</p> <p>19 the blotter, and then you follow it all the way</p> <p>20 through, and you can sort of see how it's entered</p> <p>21 into the system, how it appeared as a</p> <p>22 reconciliation, how it might have appeared on the</p> <p>23 statements, you know, from the brokers, and so on,</p> <p>24 and I was just told that that just simply wasn't</p> <p>25 going to happen, and I shouldn't raise it, and,</p>
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<p>1 Q. At what point did it -- did that</p> <p>2 happen, do you remember?</p> <p>3 A. Well, there was -- there was one</p> <p>4 question, and I just remember it just because</p> <p>5 it's -- it's the terminology that was used.</p> <p>6 I asked about fat finger controls, and</p> <p>7 I just remember it because of the -- the term</p> <p>8 "fat finger", and Bernie's reaction to it was,</p> <p>9 "Well, I was the guy who helped developed the</p> <p>10 controls around fat finger at the NASD", and --</p> <p>11 well, you know, I mean, I've -- I've met enough</p> <p>12 people who, you know, are -- are sort of the</p> <p>13 people who -- who are reputable in their areas,</p> <p>14 and they're used to fobbing people off with a -- a</p> <p>15 comment, and I wasn't going to have that, so</p> <p>16 I wanted to dig into more detail and I think,</p> <p>17 you know, Hugh would probably have said something</p> <p>18 like, "Right, well, let's carry on. I mean, we</p> <p>19 can -- we can deal with that later", so that was</p> <p>20 my cue to basically stop.</p> <p>21 Q. Were there any questions or topics</p> <p>22 you were told not to ask Madoff?</p> <p>23 THE EXAMINER: Do you mean before the</p> <p>24 meeting? In other words --</p> <p>25 MR. BLEICHMAR: Correct.</p>	<p>1 again, if you've seen my report, you will see that</p> <p>2 I make specific mention of that sensitivity.</p> <p>3 BY MR. BLEICHMAR:</p> <p>4 Q. And did you follow the instruction</p> <p>5 not to raise the walk-through test?</p> <p>6 A. Yes, that's right. I didn't -- I --</p> <p>7 I didn't follow the -- the walk-through test, but</p> <p>8 I did ask for a -- a walk around the offices, and,</p> <p>9 again, you know, when somebody says to me,</p> <p>10 "Would you like to go and see X, Y, Z", I never</p> <p>11 say no; I say, "Yes, please".</p> <p>12 So when he offered -- and, again, I can</p> <p>13 only remember this because I've -- I've read the</p> <p>14 report again recently to refresh my memory, when</p> <p>15 you sent it through, but there was reference to</p> <p>16 the 17th floor where there was the cage with the</p> <p>17 cashiers, and -- and he said something like,</p> <p>18 "Well, you know, I'm not going to take you up to</p> <p>19 the 17th floor", and I responded by asking why</p> <p>20 not, to which he said, "Well, I'm sure we can deal</p> <p>21 with that later. I mean, let's -- let's have a</p> <p>22 look around", and, again, it got glossed over.</p> <p>23 Q. And sitting here today, after Madoff</p> <p>24 has been arrested, what is the significance of the</p> <p>25 17th floor, in your mind?</p>

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<p>1 A. Well, in reality, I don't think it 2 would have told me any more than what I found 3 looking around that particular floor, because it 4 was a standard brokerage house floor. 5 You know, it had Bernie's two sons 6 sitting on a -- a raised platform looking out onto 7 the trading floor; it had the standard brokerage 8 computer room with, you know, its bank of 9 computers in -- in there; there were people, there 10 were bodies. 11 You know, typically what I would do when 12 I walk around the office, if somebody says to me, 13 you know, "There are 30 people in the office", 14 I will tend to mentally count the number of bodies 15 there or the number of desks which have paper on 16 them to try to get a -- a sense of sort of the 17 number of people there, and it all seemed fairly 18 normal as to what you would expect of a brokerage 19 house. 20 So I'm not sure that it would have 21 actually added that much more, but it was just, 22 again, something that one remembers, given what 23 one knows now in hindsight. 24 Q. And does what we know now in 25 hindsight include the fact that the 17th floor was</p>	<p>1 I just could not see why we shouldn't be able to 2 ask for something that he had apparently allowed 3 other people to do. 4 Q. Were you able to do a walk-through 5 test of other funds that you did operational 6 due diligence on? 7 A. A number, but, again, it's not 8 unusual for a manager to say, "No way, I'm not 9 going to let you go anywhere near my -- my 10 trades", normally on the grounds of 11 confidentiality. You know, sometimes it might be 12 for real, sometimes it just might be because they 13 can't be bothered. You have to form a view on it. 14 I -- I tend to get fairly upset about 15 it if I'm not allowed to do it, which is why 16 I put that particular item in the report the way 17 I did. 18 Q. Why do you get upset if you're not 19 allowed to do it? 20 A. Because that's the one way -- that's 21 the one source of verification that would give me 22 some comfort. Again, it's not statistically 23 significant in terms of the sample, but what it 24 shows me is attitude of mind. 25 So -- so, you know, let's say there's a</p>
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<p>1 where the fraud was actually carried out? Is that 2 your understanding? 3 A. Well, I don't know. 4 Q. Going back to the walk-through test, 5 why is a walk-through test important? 6 A. Well, fundamentally, because that's 7 the only way you can verify what you've been told, 8 and -- there's no science to it. 9 You know, investors will often ask me, 10 you know, "What -- what's the point of doing 11 the -- the walk-through test? You know, what 12 happens if you find one error? Does that mean you 13 expand your sample? You know, what do you -- what 14 do you do?", and, you know, I have to say, 15 "It's not an audit". 16 You know, we're not auditors, we're not 17 trying to do sort of statistically significant 18 sample testing. It is just to get a sense of the 19 manager. That's why it's important. 20 And one of my frustrations with it was 21 that we were being told that others had been able 22 to do it. 23 Now, again, you know, looking back on it, 24 one can probably see the reasons why he might have 25 objected to something like that, but at the time,</p>	<p>1 trade there and let's just say that there are 2 actually errors on it. That -- that, in itself, 3 is not a problem. It's how they've actually dealt 4 with the trade that gives me the comfort. 5 So, you know, are they -- you know, is 6 there a second set of eyes that's looking at it; 7 how is it being reported; is there any danger of 8 conflicts of interest that might cover up the 9 issue? 10 So those were the things that would give 11 me comfort out of a -- out of a walk-through test. 12 So it -- it's not significant 13 statistically, but it's significant in terms of 14 the comfort, because it gives me some form of 15 verification, and -- I mean, it -- it is a problem 16 because a lot of -- a lot of analysts -- I mean, 17 I -- I faced this constantly at GAM, you know, 18 as -- as an example, where people would say to me, 19 "You're effectively auditing the auditors. 20 You know, what's the point of having auditors 21 there if you're going to do this", but what is 22 important is it gave you a sense of how the 23 manager operated. 24 Q. Do you know why you were given the 25 instruction not to ask for a walk-through test?</p>

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<p>1 A. Yes, because it would --</p> <p>2 MR. DANON: Object to the form.</p> <p>3 THE WITNESS: Sorry.</p> <p>4 MR. DANON: That's okay. It's for the</p> <p>5 record.</p> <p>6 THE WITNESS: It -- well, again, just</p> <p>7 because he -- he was worried that it would upset</p> <p>8 the relationship.</p> <p>9 BY MR. BLEICHMAR:</p> <p>10 Q. And if the relationship was upset,</p> <p>11 what would be the repercussions of that?</p> <p>12 A. I think we'd get less capacity.</p> <p>13 I mean, you know, it was all a capacity game,</p> <p>14 at the end of the day.</p> <p>15 Q. And what do you mean by "a capacity</p> <p>16 game"?</p> <p>17 A. Well, Bernie Madoff didn't really</p> <p>18 need to give us access to his fund. We were being</p> <p>19 told we were being granted this great favor by</p> <p>20 being allowed to invest with him.</p> <p>21 So, you know, it was -- it was something</p> <p>22 that they wanted to protect as much as they could,</p> <p>23 and I was somebody who potentially could upset the</p> <p>24 apple cart by -- by asking the questions that they</p> <p>25 knew I asked.</p>	<p>1 Q. Just to clarify that point, would it</p> <p>2 refresh your recollection if I represent to you</p> <p>3 that our understanding is that the investment by</p> <p>4 Optimal SUS in -- in Madoff was approximately done</p> <p>5 in 1996/1997?</p> <p>6 MR. DANON: Object to the form.</p> <p>7 THE WITNESS: It's entirely possible.</p> <p>8 BY MR. BLEICHMAR:</p> <p>9 Q. The -- the records are what they</p> <p>10 are; correct?</p> <p>11 A. Yes.</p> <p>12 Q. Focusing on the first attachment,</p> <p>13 which is Bates -- to the email marked as</p> <p>14 exhibit 1, which is Bates stamped 682 through</p> <p>15 95 -- do you see that document?</p> <p>16 A. Yes.</p> <p>17 Q. And it is labeled "Optimal Strategic</p> <p>18 U.S. Equity"; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And it is dated August 2003;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Do you see right below it, where it</p> <p>24 says "New York Research Team"?</p> <p>25 A. Yes.</p>
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<p>1 Q. And, just to clarify the record,</p> <p>2 before when you said "because he was worried that</p> <p>3 it would -- it would upset the relationship", were</p> <p>4 you referring to Manuel?</p> <p>5 A. Yes. I mean, Hugh was worried as</p> <p>6 well, but -- I mean --</p> <p>7 Q. Let me direct you to the first</p> <p>8 attachment to the email that is part of exhibit 1,</p> <p>9 and by --</p> <p>10 THE EXAMINER: Could I just ask, just</p> <p>11 before you move there --</p> <p>12 MR. BLEICHMAR: Sure.</p> <p>13 THE EXAMINER: -- it's just for --</p> <p>14 for -- for my knowledge, because I don't know --</p> <p>15 I expect everyone else in the room does: how long</p> <p>16 had OIS invested in Madoff before you started</p> <p>17 being employed there? Do you know?</p> <p>18 THE WITNESS: Oh, I think about 13</p> <p>19 years, maybe.</p> <p>20 THE EXAMINER: Thirteen years?</p> <p>21 THE WITNESS: I -- I'm not sure of my</p> <p>22 numbers precisely, but it was a long time.</p> <p>23 THE EXAMINER: A long time. Fine.</p> <p>24 That's fine. Thank you.</p> <p>25 BY MR. BLEICHMAR:</p>	<p>1 Q. What was your understanding of who</p> <p>2 the New York research team included?</p> <p>3 A. The New York research team was</p> <p>4 Hugh Burnaby-Atkins, Jonathan Clark,</p> <p>5 Balkir Zihnali, Tom Lileng. They -- Balkir and</p> <p>6 Tom came slightly later, I think.</p> <p>7 I'm just trying to think of the layout of</p> <p>8 that room. I think that was it. That was the</p> <p>9 research team.</p> <p>10 Q. And do you have an understanding as</p> <p>11 to who was the primary author of this report, or</p> <p>12 the primary authors of this report?</p> <p>13 A. I -- I can only speculate at this</p> <p>14 point.</p> <p>15 THE EXAMINER: No, I don't -- we</p> <p>16 shouldn't have speculation. If you don't know,</p> <p>17 you don't know.</p> <p>18 BY MR. BLEICHMAR:</p> <p>19 Q. Do you see towards the middle of the</p> <p>20 page it says "Attendees"?</p> <p>21 A. Yes.</p> <p>22 Q. And then there's a series of --</p> <p>23 of -- of capital letters there?</p> <p>24 A. (Witness nods head.)</p> <p>25 Q. Could you tell me who those</p>

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<p>1 individuals are referred to?</p> <p>2 A. Well, "HBA" will be Jonathan --</p> <p>3 sorry, will be Hugh Burnaby-Atkins; "JCL" I think</p> <p>4 is Jonathan Clark. I'm not sure about the others.</p> <p>5 Q. Is "MEF" --</p> <p>6 A. "MEF" might be Manuel.</p> <p>7 Q. Manuel Echeverria Falla?</p> <p>8 A. Yes.</p> <p>9 Q. Is that --</p> <p>10 A. It might be, yes.</p> <p>11 Q. You don't know who "SSE" is?</p> <p>12 A. I can't recall.</p> <p>13 Q. And "JWO" you can't recall either?</p> <p>14 A. No.</p> <p>15 Q. Okay. And when you received this</p> <p>16 email, you read the report; correct?</p> <p>17 A. I don't recall --</p> <p>18 MR. DANON: Object to form.</p> <p>19 THE WITNESS: -- reading it</p> <p>20 specifically.</p> <p>21 BY MR. BLEICHMAR:</p> <p>22 Q. Do you have any reason to believe</p> <p>23 you did not read it?</p> <p>24 A. No. It's something I suspect.</p> <p>25 I would have read with interest.</p>	<p>1 was not in the least bit surprising.</p> <p>2 BY MR. BLEICHMAR:</p> <p>3 Q. Further down in the section that</p> <p>4 is -- well, let me strike that.</p> <p>5 If Madoff is really no different to the</p> <p>6 vast multitude of hedge fund managers, then what</p> <p>7 was your understanding as to why that comment was</p> <p>8 made here in the report?</p> <p>9 MR. DANON: Object to the form;</p> <p>10 speculative.</p> <p>11 THE WITNESS: I -- I think because it --</p> <p>12 it was something that was clearly obvious: he was</p> <p>13 secretive. It meant that they couldn't do the</p> <p>14 analysis that they would typically expect to do of</p> <p>15 a -- of a hedge fund manager. It was certainly</p> <p>16 much lighter in detail than a lot of the other</p> <p>17 reports that I would have seen and dealt with.</p> <p>18 So ...</p> <p>19 BY MR. BLEICHMAR:</p> <p>20 Q. Moving on to the box labeled</p> <p>21 "Organization", the second paragraph. The second</p> <p>22 sentence says:</p> <p>23 "However, the accounts are not set up as</p> <p>24 a hedge fund and do not charge any fees (despite</p> <p>25 the fact that it would seem highly profitable to</p>
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<p>1 Q. Is that your normal operation --</p> <p>2 your normal procedure at work: you would read the</p> <p>3 reports they give to you?</p> <p>4 A. Absolutely.</p> <p>5 Q. Let me guide you to the first box</p> <p>6 that says -- well, the second box. It says,</p> <p>7 "Recommendation". Do you see that?</p> <p>8 A. Yep.</p> <p>9 Q. And do you see the second sentence</p> <p>10 says:</p> <p>11 "Although Madoff remains to some extent</p> <p>12 secretive about the exact details of his strategy,</p> <p>13 he nevertheless provides full transparency of</p> <p>14 trades on a weekly basis."</p> <p>15 A. (Witness nods head.)</p> <p>16 Q. What did this mean to you, that</p> <p>17 Madoff was, to some extent, secretive about the</p> <p>18 exact details of his strategy?</p> <p>19 MR. DANON: Object to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: Again, Madoff is really no</p> <p>22 different to the vast multitude of hedge fund</p> <p>23 managers who are secretive about what they do and</p> <p>24 how they do it. So the fact that there was a</p> <p>25 report there that was saying that he was secretive</p>	<p>1 do so) ..."</p> <p>2 Do you see that?</p> <p>3 THE EXAMINER: I'm lost? Oh, it is in</p> <p>4 the -- the second paragraph in that box.</p> <p>5 MR. BLEICHMAR: The second sentence.</p> <p>6 BY MR. BLEICHMAR:</p> <p>7 Q. Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. What did this mean to you?</p> <p>10 MR. DANON: Again, objection to form.</p> <p>11 THE WITNESS: Madoff, as I understood</p> <p>12 the -- the structure, didn't wish to be registered</p> <p>13 as an investment manager. So the way he</p> <p>14 structured the account that we had was that he</p> <p>15 traded the trades that he traded on an</p> <p>16 execution-only basis, which meant that we were</p> <p>17 effectively giving the order of the trades that he</p> <p>18 was going to trade, and there were only</p> <p>19 two discretions that were given to him. One was</p> <p>20 when he went into the market and came out, and the</p> <p>21 other was the price at which he went in and went</p> <p>22 out, and the way he took his remuneration, given</p> <p>23 that he was a broker/dealer, was that he took</p> <p>24 whatever it was per share, and that was the -- the</p> <p>25 commission that he -- he effectively took.</p>

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<p>1 Now, again, you know, you do come across 2 hedge fund managers who will, for example, allow 3 access to their funds where there are, in fact, 4 no charges, so family and friends are a classic 5 category of investor that would not be charged 6 fees, and Madoff, in this particular instance, was 7 structuring it in such a way that he actually got 8 brokerage commission, rather than investment 9 management fees, and in some ways, you know, it -- 10 it made sense. If he didn't want to be an 11 investment manager -- I mean, look, you know, 12 hedge funds, essentially, are structured to either 13 get around tax issues -- you know, that's why 14 investors go into offshore funds. You know, 15 they're -- they're looking at -- at those 16 particular aspects of structure, and Madoff 17 was just another one of those people. 18 He was structuring it in such a way that 19 he didn't have to register as an investment 20 manager and, yes, it would have been very 21 profitable for him to charge those fees, but he'd 22 chosen to do it this way and -- and, again, I -- 23 I guess everyone was -- was grateful to him 24 because they were being given this capacity. 25 So, you know, they -- they sort of</p>	<p>1 Q. And what was your understanding as 2 to why he did not charge those types of fees? 3 MR. DANON: Objection to the form of the 4 question. 5 THE WITNESS: As I have just explained, 6 it was because he didn't want to register as an 7 investment manager. 8 BY MR. BLEICHMAR: 9 Q. So he -- is this fair to say, that 10 he was forgoing profitability to avoid 11 registration with the SEC? 12 MR. DANON: Objection to the form of the 13 question. 14 THE WITNESS: I don't know. I can only 15 assume that that was one of the reasons. 16 BY MR. BLEICHMAR: 17 Q. Is that something that you assumed 18 at the time, that that was one of the reasons? 19 A. Yes. 20 MR. DANON: Objection to form. 21 THE WITNESS: Sorry. I need to slow it 22 down. 23 BY MR. BLEICHMAR: 24 Q. Did you discuss this report with 25 anyone?</p>
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<p>1 accepted the fact that -- that this was the way it 2 was going to be charged. 3 BY MR. BLEICHMAR: 4 Q. When you say "registered as an 5 investment adviser", do you mean registered with 6 the Securities Exchange Commission in the 7 United States? 8 A. That's correct. 9 Q. So Madoff was not registered with 10 the SEC as an investment adviser? 11 MR. DANON: Objection to form. 12 THE WITNESS: If I recall it 13 correctly -- 14 BY MR. BLEICHMAR: 15 Q. At the time. 16 A. Yeah, he became -- he subsequently 17 did register, as I understand it. 18 Q. You mentioned that it would have 19 been very profitable for him to charge those fees; 20 correct? It would have been very profitable for 21 Madoff to charge those fees, and I think you were 22 referring to -- 23 A. I -- I would assume so, based on the 24 returns he was giving and the amount of money he 25 purportedly had under management.</p>	<p>1 A. This particular one? 2 Q. Yes. 3 A. I can't recall. 4 Q. Putting aside whether it was in 5 connection with this report or not, did you 6 discuss with Hugh Burnaby-Atkins or Jonathan Clark 7 this issue that we've been talking about, that 8 Madoff was not registered with the SEC as an 9 investment adviser and that he does not charge any 10 fees as a hedge fund? 11 MR. DANON: Objection to the form of the 12 question. 13 THE WITNESS: I would almost certainly 14 have discussed it, because that was fundamental to 15 understanding how the structure operated. 16 BY MR. BLEICHMAR: 17 Q. And what did you discuss? 18 A. Well, I -- 19 MR. DANON: Object to the form. 20 THE WITNESS: -- can't recall the detail 21 now. 22 BY MR. BLEICHMAR: 23 Q. Going to the third paragraph under 24 "Organization", the last sentence in that 25 paragraph, do you see where it says:</p>

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<p>1 "The inference is that the manager 2 prefers to operate using quiescent capital from 3 fund-of-funds who do not ask too many questions." 4 A. Yes, I see it. 5 Q. What did that mean to you at the 6 time? 7 A. Again -- 8 MR. DANON: Object to the form of the 9 question. 10 THE WITNESS: -- I'm afraid this is 11 fairly normal for a hedge fund. It's the classic 12 problem I've had to face in doing operational 13 due diligence. 14 What will generally happen -- well, 15 let -- let me try and explain it this way: 16 if you've got \$100 to give to a manager and 17 I've got \$100 to give to a manager -- let's say 18 it's Bernie Madoff -- I'm the one who is going to 19 be asking lots of difficult questions and you're 20 not going to be asking any, because you're just 21 grateful to be given capacity by Mr. Madoff, and 22 he has only got \$100 worth of capacity to take 23 from any investor. Which investor is he going to 24 take? 25 Well, the chances are he will take you,</p>	<p>1 A. Well, you've got to remember, 2 they hadn't really had somebody who was doing 3 unique due diligence, stand-alone due diligence, 4 so it was really in that context. 5 Look, you know, I used to get complaints 6 from managers. You know, people would ring up -- 7 it's one of the reasons why, in fact, I always 8 used to ask for my phone to be taped so that I had 9 a recorded phone, because occasionally I would 10 have -- the way it would go -- I mean, there was 11 one particular manager I remember I -- I asked 12 questions of, and whilst they were nice and 13 general questions, the feedback that was coming 14 back on emails was, "Wonderful chap, you know, 15 really professional", and then, when it came to 16 the decision to invest, I produced a side letter 17 with 30 points on it asking him to -- you know, 18 I wanted this tidied up in terms of operations, 19 I wanted this tightened up before we invested, 20 I wanted reports on this, at which point 21 I suddenly became the most unprofessional person 22 they'd ever encountered. 23 Now, all one could do in those 24 circumstances was play back the tapes. 25 So, you know, again, it was fairly</p>
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<p>1 because you're going to be less hassle for him. 2 So I'm afraid, with me coming along, I was, 3 in effect, the "hassle factor", because I was 4 starting to ask difficult questions, and, again, 5 you know, it's perfectly normal in this sort of 6 scenario to have managers who would say, "You know 7 what, we'd rather give -- we'd rather give that 8 capacity to -- to somebody else", and it's 9 something, you know, I've faced in my career. 10 It's -- it -- it was certainly not the 11 first time, and, in fact, it hasn't been the last 12 either. You know, I have faced it a number of 13 times since. 14 BY MR. BLEICHMAR: 15 Q. You mentioned that, "with me coming 16 along, I was, in effect, the 'hassle factor', 17 because I was starting to ask difficult 18 questions"? 19 A. Yes. 20 Q. Was it your view that, until that 21 point, OIS had not been asking difficult 22 questions, until your arrival at Banco Santander? 23 A. I don't know. 24 Q. So what did you mean when you said, 25 "I was starting to ask difficult questions"?</p>	<p>1 normal, certainly at that time, for people to 2 go gently with managers who were successful and 3 who had limited capacity, because you wanted 4 access, and, really, a lot of the things that 5 I viewed in terms of what happened with Madoff 6 and with Optimal were because I felt that these 7 guys were trying to protect it, and I felt 8 possibly overly so in the way they approached it. 9 Q. Why do you -- why did you feel they 10 were overly so trying to protect -- and let me -- 11 let me clarify that question. 12 When you say "these guys", were you 13 referring -- 14 A. The investment analysts. 15 Q. Hugh Burnaby-Atkins and 16 Jonathan Clark? 17 A. Yes. 18 Q. Would that include Manuel Echeverria 19 also? 20 A. Yes. 21 Q. So Manuel Echeverria, 22 Hugh Burnaby-Atkins and Jonathan Clark were 23 trying to protect the Madoff investment? 24 A. I think they were trying to protect 25 the relationship, yes.</p>

21 (Pages 78 to 81)

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<p>1 Q. And when you say "overly so", what 2 do you mean by that? 3 A. Sorry, in -- you will have to remind 4 me of the context again. 5 Q. "I felt that these guys were trying 6 to protect it and I felt possibly overly so in the 7 way they approached it"? 8 A. Right. Well, yes, because, on the 9 one hand, they were saying that I'd been recruited 10 specifically to develop this -- this area, but, 11 on the other hand, they were worried about what is 12 happening with their relationship. 13 Q. Did you discuss Madoff prior to your 14 employment -- let me strike that. 15 When you were being recruited, did you 16 discuss Madoff with Manuel Echeverria? 17 A. I discussed with it Hugh, as I told 18 you earlier. 19 Q. But you did not discuss it with 20 Manuel Echeverria? 21 A. No. 22 Q. Were you -- 23 A. I don't -- I don't recall it. 24 Q. At this time, when -- when you were 25 being recruited, did you have an understanding of</p>	<p>1 nature of it. 2 Q. So approximately 40 percent of the 3 assets under management that OIS held were managed 4 by Madoff; is that more or less your recollection? 5 A. Yes. 6 Q. And when you discovered this, 7 did you discuss with this Manuel or with 8 Hugh Burnaby-Atkins or with Jonathan Clark? 9 A. Well, as I explained to you earlier, 10 we had this discussion about whether Madoff was 11 part of my remit, and I very much wanted it to be 12 part of my remit. So it's only in that context. 13 Q. Did you recommend that the 14 investment in Madoff be reduced when you first 15 started working at Banco Santander, based on the 16 size of the investment? 17 A. No. 18 Q. Why not? 19 A. Well, one of the reasons was, 20 before I arrived, one of the things that we agreed 21 was that my prime focus would be on new 22 investments, rather than on existing investments. 23 Now, obviously I'm chief risk officer not 24 of new investments, but of all the investments, so 25 I knew that I would have to get to grips with this</p>
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<p>1 the size of the investment with Madoff by -- by 2 OIS? 3 A. No. 4 Q. When did you -- approximately when 5 did you find out the size of the investment with 6 OIS? 7 A. When I first -- 8 Q. With Madoff by OIS? 9 A. Well, when I first looked at the 10 portfolio, when I -- when I arrived. 11 Q. Were you surprised by the size of 12 the investment with Madoff? 13 A. Yes. 14 Q. Why? 15 A. Well, again, for a fund-of-funds 16 it is normal practice to limit your exposure to 17 maybe 5 percent to any single issuer. This was a 18 lot larger, in terms of exposure. 19 Now, obviously you do get single manager 20 funds. They're not unusual. But to have that 21 large a chunk with one manager was surprising. 22 Q. How large, approximately, is your 23 recollection? 24 A. I think it was around 40 percent, 25 but I can't really recall the precise sort of</p>	<p>1 at some point, and, in fact, at a later point, 2 when we looked at expanding our capacity, at that 3 stage I did discuss it both with Manuel and 4 group risk, who were essentially responsible 5 for -- well, what they did was, group risk would 6 sort of determine the amount of new capacity that 7 we were allowed to take with Madoff, and at that 8 point, I did say that I felt we were overexposing 9 ourselves here, particularly given sort of how 10 little we knew about the manager. 11 Q. And why do you say you knew so 12 little about the manager? 13 A. Well, it's patently clear, from all 14 the reports that you will see, that we actually 15 knew very little. 16 Q. And, for us, who are not 17 professional investment advisers and are not 18 finance people, what -- what do you mean 19 specifically by "we knew very little"? What would 20 you have wanted to know that you didn't know? 21 A. Well, we didn't have any independent 22 verification of how our money was being held, 23 how the investments were being made and held. 24 You know, we had no idea about a number of issues 25 on that manager.</p>

22 (Pages 82 to 85)

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<p>1 Q. And why is information -- why is 2 independent verification of how the money being -- 3 is being held important? 4 A. Because that's the only way that 5 you can get comfort that the money is safe, and, 6 you know, it's -- does it give you total comfort? 7 Of course not. You know, nothing is risk free. 8 But you're -- that is why it is important to do 9 some of the few things that you can do, and to do 10 them to the best of your ability. 11 Q. Is obtaining independent 12 verification an important part of operational 13 due diligence? 14 A. I think so. 15 Q. Would you characterize it among the 16 different aspects of operational due diligence as 17 being in the most -- towards the more important 18 end of the spectrum or less important end of the 19 spectrum? 20 A. Towards the more important. 21 Q. Is there anything more important, 22 perhaps, than obtaining independent verification? 23 A. Yes: the contractual terms. 24 You know, you could have some fairly silly 25 contractual terms and you could verify as much as</p>	<p>1 if I remember correctly. 2 Now, I mean, yes, you know, the manager 3 was doing execution only on price and timing 4 discretion. Those were the two variations. 5 But there was nothing there that gave me the 6 comfort as to how the money would be paid over, 7 how it would be received, how it would be held, 8 how the investments would be made, how the 9 investments would be held, to what extent we could 10 have comfort on the investments, what reporting 11 there was being done on it, whether I could expect 12 them to comply to certain regulatory standards or 13 not, and, also, the -- the signatory to the -- the 14 contract was an entity which, again, if I recall 15 correctly, had been liquidated a number of years 16 earlier. 17 So, as you will see from my report, 18 it was a fairly fundamental view that I had that 19 that needed sorting out, and, to a large extent -- 20 I mean, one conversation that I certainly do 21 recall having with Manuel was, "You know, you can 22 do as much operational due diligence as you like, 23 but until you've got all the contracts and all the 24 paperwork sorted out, you know, this is neither 25 here nor there".</p>
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<p>1 you like, but if you don't have any rights, or the 2 rights are different to the ones you thought you 3 were investing, then that -- that can be serious. 4 But I suppose you could call that a form of 5 verification, if you wanted. 6 Q. But the contractual terms are 7 something that you know what contractual terms 8 you have, versus what you don't have; correct? 9 A. Theoretically. I mean, it wasn't 10 the case with Madoff, for example. 11 Q. And why not? 12 A. Because there weren't actually, 13 in my view, proper contracts in place. 14 Q. So you mentioned that one of the 15 aspects that is perhaps more important in terms 16 of -- in terms of operational due diligence than 17 independent verification is -- are contractual 18 terms; correct? 19 A. Yes. 20 Q. And contractual terms, in your view, 21 were not adequate with respect to Madoff; is that 22 right? 23 A. Well, the problems were quite 24 fundamental. The contract that I eventually 25 got to see was a trading execution agreement,</p>	<p>1 So, you know, just in terms of 2 square one, the missing pieces are -- are not sort 3 of sorted out, and that took a long, long time to 4 sort out. 5 Q. Did that ever get sorted out? 6 A. It did, eventually; but never 7 completely to my satisfaction. 8 Q. Why not? 9 A. Because we made lots of compromises 10 along the way, and, again, as you will have seen 11 from the paperwork, it's not something that 12 I'm terribly happy about, and that's why -- 13 I mean, you know, we -- we'd pushed and 14 we'd pushed. 15 I think, if you look at it in terms of 16 time line, I met Madoff in February -- 17 Q. Of 2006; correct? 18 A. Of 2006. If I recall correctly, 19 it's a couple of months after that that I actually 20 got to see the paperwork, because I think the 21 first reaction was, "Well, why do you need to see 22 it? That's something for counsel to deal with". 23 But I eventually got to see it. 24 Then I raised the issues around it, 25 to which the first reaction was, "Well, that's</p>

23 (Pages 86 to 89)

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1 rubbish. You know, there -- there isn't a
2 problem", and I said, "Well, actually, there is a
3 problem, and here's what I think the problems
4 are".

5 And I -- again, if I recall correctly,
6 I think it was 2007 that we finally got the
7 paperwork that we did eventually get signed up
8 signed up, and, in that time, I probably had one,
9 possibly two, conversations with -- with Madoff
10 on -- when Bernie sort of rang me up and said,
11 "Well, what do you want in this contract?"

12 Q. And what did you say?

13 A. Well, I told him -- you know,
14 I think you've seen there's a list of issues that
15 I had. I went through them and I said that's what
16 I wanted reflected.

17 Again, you see, maybe I should explain
18 something about the approach. My idea was that,
19 okay, we've got a secretive manager. There is
20 nothing unusual with that. But with secretive
21 managers, the -- the way to deal with it is to
22 build up a picture over a period of time, and this
23 is a manager who'd been with OIS for some time.

24 So I reckoned -- I mean, it's a bit like,
25 you know, with these reports here, but I wanted

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1 one that was building it up from an operational
2 due diligence perspective, so the issues that
3 mattered to me: the brokerage set-up; the fact
4 that the assets were segregated. These -- these
5 things mattered. The fact that there was a
6 regulatory oversight on it.

7 So the idea was, over a period of time,
8 I would get to meet this person and build a series
9 of reports on it, and that is what would help give
10 us the insight into the manager.

11 Q. Did you ever write more than one
12 report on Madoff?

13 A. No, it was -- that was the --
14 the one report that I wrote.

15 Again, you've got to look at it in the
16 context of all the other things that were going
17 on. There were several other issues that were
18 being debated, such as some of the new
19 due diligence that we were doing. So, you know,
20 that's the only one.

21 And also, in that context, given when
22 I realized sort of what the issues were, the --
23 the contractual issues, I started focusing on that
24 a lot more, because I wanted that sorted out first
25 before we developed any of the other.

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1 Q. You mentioned that you were
2 interested or -- or that it mattered to you a
3 number of issues. One were -- of the issues was
4 the brokerage set-up; correct?

5 A. Yes.

6 Q. And what do you mean by the
7 brokerage set-up?

8 A. Well, what we understood that Madoff
9 did was, he held the assets through DTC, which was
10 the -- the standard clearing corporation, but we
11 didn't know -- I mean, he'd told us that it was
12 held in a client account, so I guess, in terms of
13 comfort, I knew that if there was ever a problem
14 with Madoff, if what we'd been told was correct,
15 was that at least I'd have a tracing action into
16 the segregated assets that were client assets
17 sitting within DTC.

18 But I didn't really know who the brokers
19 were or how it was being held, whether that was in
20 fact really the case, and -- I mean, to an extent,
21 that whole verification process is really the nub
22 of the reason why I left, because, you know, they
23 weren't really prepared to go down that route of
24 really trying to sort that side out, and I just
25 felt my reputation was not worth it.

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1 Q. To put it differently, Madoff was
2 his own custodian; is that correct? Or he
3 purported to be his own custodian; is that right?

4 A. That's not strictly correct, because
5 he was saying that DTC held the assets there, but,
6 otherwise, yes, they were effectively
7 self-custodied. As we --

8 THE EXAMINER: "DTC"? I'm sorry.

9 THE WITNESS: Yes, DTC is a -- a company
10 that essentially clears and settles trades in
11 U.S. equities.

12 THE EXAMINER: Is it a Madoff company or
13 was it a standard --

14 THE WITNESS: No, no, it's a standard --
15 stand-alone, independent set-up. It clears all
16 the U.S. equity trades.

17 THE EXAMINER: Sorry, Mr. Bleichmar, you
18 carry on.

19 BY MR. BLEICHMAR:

20 Q. So your understanding of what Madoff
21 was saying was that DTC held the assets?

22 A. Yep.

23 Q. So in what sense was Madoff the
24 custodian?

25 A. Because he controlled it.

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<p>1 Q. Is it possible to have self-custody 2 but for there to be independent verification of 3 the assets? 4 A. Well, that's what you have auditors 5 for. 6 Q. So if you have self-custody, you 7 would want to ensure that the auditors are 8 independent; is that fair? 9 A. Yes. 10 Q. Were you ever able to confirm 11 whether DTC held the assets of Optimal SUS? 12 A. No. 13 Q. Why not? 14 A. Because that is something that we 15 wouldn't have been allowed to do. 16 Q. When you say "we weren't" -- 17 "wouldn't have been allowed to do", what do you 18 mean by that? 19 A. Well, OIS would not have been able 20 to go to DTC, because it was effectively a Madoff 21 account. 22 Q. So OIS was never able to confirm 23 whether Madoff's statements that the -- that the 24 assets were held at DTC was correct; is that 25 right?</p>	<p>1 was -- so it was the basket of equities that would 2 have gone through DTC. 3 Then there were the OTC options, so the 4 calls and the puts, which was essentially the 5 hedge against the basket. Those were effectively 6 self-custodied, because he would be holding those. 7 So I guess -- I don't know whether that 8 answers your question. 9 Q. It does. But another way to put it 10 is that custody has two components: one is 11 having, for example, the equities by DTC and 12 another aspect is the control; is that correct? 13 A. Well, it's who's holding it and who 14 has control of it. 15 Q. With respect to the treasuries, what 16 was your understanding as to the custody of the 17 treasuries? 18 A. Well, we didn't know. That's one of 19 the issues that I raised. 20 Q. Who did you raise that with? 21 A. I can't recall now, but there were 22 emails, and I think it's even in the report. 23 MR. BLEICHMAR: Should we take a -- a 24 break? Let's go off the record. 25 THE EXAMINER: Okay.</p>
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<p>1 A. Yes. 2 MR. DANON: Objection to the form. 3 BY MR. BLEICHMAR: 4 Q. Would you agree with the statement 5 that Madoff was a custodian of the fund? 6 MR. DANON: Object to the form. 7 THE WITNESS: It depends on how you 8 define "custodian". 9 BY MR. BLEICHMAR: 10 Q. How would you define "custodian"? 11 A. Well, if you're holding the assets 12 and you're controlling them, then, yes, you're the 13 custodian, but, you know, you could have 14 somebody -- control -- control is not the sole 15 characteristic of it because -- I mean, on that 16 basis, anything that is custodied with a 17 third party is controlled by the manager, but, 18 essentially, the money was coming back into his 19 hands, so it was coming back into a Madoff account 20 with Madoff, Madoff the entity, and he was then 21 either buying treasuries -- and, again, I wanted 22 to know in whose name they were held, how they 23 were held, because we didn't really know that; 24 he was then buying stocks, so this was the basket 25 of equities that he was buying; and, again, so it</p>	<p>1 THE VIDEO OPERATOR: Going off the 2 record. The time is 12:05. End of tape 1, 3 volume I, of the videoed deposition of 4 Rajiv Jaitley. 5 (12:05 p.m.) 6 (Break taken.) 7 (12:20 p.m.) 8 THE VIDEO OPERATOR: This is the 9 beginning of videotape number 2, volume I, in the 10 videotaped deposition of Rajiv Jaitley. Going on 11 the record. The time is 12:20. Thank you, sir. 12 MR. BLEICHMAR: I'm going to mark as 13 exhibit 2 a document bearing Bates stamps 3128584 14 through 87. 15 (Exhibit 2 marked for identification.). 16 BY MR. BLEICHMAR: 17 Q. Do you see, Mr. Jaitley, that this 18 document reflects an email from Jonathan Clark to 19 Hugh Burnaby-Atkins on March 29, 2006, in which 20 you are copied? 21 A. Yes. 22 Q. Do you recognize this document or 23 can you tell us what this document generally is? 24 THE EXAMINER: Just the front page, or 25 all of it?</p>

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<p>1 MR. BLEICHMAR: All of it. 2 THE EXAMINER: I see. It's all 3 connected, is it? 4 MR. BLEICHMAR: Correct. 5 THE EXAMINER: Okay. 6 THE WITNESS: I mean, essentially, 7 the -- the background to this is that I had sent 8 to the analysts a copy of a report which was a 9 complaint by DePauw University, I think is -- is 10 how you refer to it, against Bayou, and that was a 11 complaint which essentially referred to what the 12 documents described as to the investment process 13 and what they would do in relation to that 14 particular investment, and the complaint was, 15 essentially, that -- that the manager had not 16 discharged those -- those particular obligations 17 that were in that document. So I -- 18 THE EXAMINER: Does this have anything 19 to do with Madoff, this particular complaint? 20 THE WITNESS: No. 21 THE EXAMINER: It's completely separate? 22 THE WITNESS: It's completely -- it -- 23 it was just something that appeared in the press, 24 that -- that this particular complaint had been 25 filed in the U.S., and, again, it was relevant to</p>	<p>1 A. Yes. 2 Q. Could you tell us what that is? 3 A. Bayou is another hedge fund manager 4 and hedge fund. 5 MR. DANON: I'm going to object. 6 That's outside the scope of the examination. 7 THE EXAMINER: Well, it is, rather. 8 Do we need to get into any more detail about 9 Bayou? 10 MR. BLEICHMAR: If I could just 11 establish the parallel between Bayou and Madoff, 12 because that's what -- the witness testified that 13 he sent it as part of the operational 14 due diligence. 15 I won't delve deeply into it, but it is a 16 document that the witness circulated. 17 THE EXAMINER: Mr. Danon? 18 MR. DANON: I mean, I -- I think 19 still -- I think he testified that this was not in 20 connection with Madoff and that it was just 21 general operational due diligence not specific to 22 Madoff. 23 THE WITNESS: That's correct. 24 THE EXAMINER: But he did circulate this 25 as a sort of pointer to the sort of things we</p>
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<p>1 the -- the work that we did as an operational 2 due diligence team, in terms of the 3 responsibilities that we had, and so I circulated 4 it, again, really, to emphasize the importance of 5 what we disclosed in documents and how we dealt 6 with some of the issues. 7 And Hugh has -- is essentially responding 8 on it, and I -- I was, again, trying to emphasize 9 that we should be doing more around the 10 verification process on Madoff, and I guess that 11 was Jonathan's response to what Hugh had said. 12 BY MR. BLEICHMAR: 13 Q. Let me just go through some basics 14 on -- of the document itself. 15 Is there any reason to dispute the 16 authenticity of this document? 17 A. I can't think of any reason why 18 I would. 19 Q. So you don't have any reason to 20 believe that the document is not accurate; 21 correct? 22 A. (Witness shakes head). 23 Q. With respect to the DePauw complaint 24 that you were referring to, you also mentioned, 25 I think, an entity called Bayou; is that correct?</p>	<p>1 should be looking at vis-a-vis Madoff. 2 MR. BLEICHMAR: And the response was in 3 respect of Madoff. 4 THE EXAMINER: I think a limited 5 exploration is okay. 6 BY MR. BLEICHMAR: 7 Q. Mr. Jaitley, is it true that Bayou 8 was also a ponzi scheme? 9 A. I shall be perfectly honest right 10 now, and there's a reason for this: I have just 11 been looking at a whole host of funds and I can't 12 for the life of me remember the precise details on 13 Bayou. I'm sorry. I should really know it, but 14 I -- I can't recall them. 15 (Exhibit 3 marked for identification.) 16 MR. BLEICHMAR: I'm going to mark as 17 exhibit 3 a document bearing Bates stamps 826891 18 through 20, 920, and this is an email from 19 Hugh Burnaby-Atkins to Jonathan Clark in which you 20 are copied; correct? 21 A. No, I don't think was copied in on 22 this one -- or am I? 23 Q. Do you see the -- 24 A. Yes. Oh, yes, I am, sorry. 25 Q. Do you have any reason to believe</p>

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<p>1 that this document is not an authentic copy of the 2 original document? 3 A. No, no reason. Sorry, do I need to 4 say that loudly: no. 5 Q. And before that, you mentioned that 6 you had circulated a complaint, a DePauw-related 7 complaint; is that right? 8 A. Yes. 9 Q. Is this -- is the document bearing 10 Bates stamps 894 through 920 the document you were 11 referring to? 12 A. I have no reason to doubt that it 13 isn't. 14 Q. And does this refresh your 15 recollection as to why you circulated this 16 document in relation to Madoff? 17 MR. DANON: Objection to the form of the 18 question. 19 THE WITNESS: As I explained, it was 20 really to do with the nature of the disclosures 21 and how one operates in response to the 22 disclosures, and -- and also what response you can 23 get in the form of a complaint like this if one 24 doesn't follow them. 25 BY MR. BLEICHMAR:</p>	<p>1 how they operated to how they ran. 2 Now, with Optimal, this was very much the 3 start of the journey, in that sense. So what 4 I was doing with circulating information like this 5 was to really highlight to them the importance of 6 how we disclosed things and how we discussed 7 things with clients and how we actually then 8 backed it up with what we did. 9 Q. A little bit earlier you said that 10 you thought you -- "we needed to make our 11 disclosures clearer in a document"? 12 A. Yes. 13 Q. Which document were you referring 14 to? 15 A. The -- the offering memorandum. 16 Q. Let me go back to exhibit 2. Do you 17 see the second page? 18 A. Yes. 19 Q. There is an email from 20 Hugh Burnaby-Atkins to Jonathan Clark in which you 21 are copied, and the email is dated March 28th, 22 2006? 23 A. March 29th. 24 Q. On the second page, do you see 25 there's a prior email?</p>
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<p>1 Q. And what did you mean by "the nature 2 of the disclosure and how one operates in response 3 to the disclosures"? 4 A. Well, again, I think what you have 5 here is a complaint which describes an investment 6 management process and how that management process 7 was discharged. 8 Now, one of the issues that I had in 9 relation to Madoff was that we needed to make our 10 disclosures in the document a lot more clearer 11 than they were as to what we did and what we were 12 not able to do, in particular, so that it was 13 absolutely clear that -- for example, that we were 14 not able to verify a number of the issues around 15 how Madoff operated. 16 Q. When you say -- 17 A. But it wasn't -- I mean, you know, 18 it wasn't specific to Madoff. It was -- again, 19 if I can just put a bit of context to it, it took 20 me five and a half years at GAM to get to a stage 21 where the analysts were sort of accepting of the 22 due diligence process, but it was a -- a long hard 23 slog to actually convert them from being people 24 who really felt that this was an unnecessary 25 process and really affected sort of how they --</p>	<p>1 A. Oh, the 28th one? 2 Q. Correct. 3 A. Yes. 4 Q. And do you see towards -- the -- 5 the second paragraph starts, "Just to be clear"? 6 A. Yep. 7 Q. Do you see that? If you could read 8 that paragraph and tell me what that paragraph is 9 about? 10 A. Do you want me to read it aloud? 11 Q. No, just read it to yourself and 12 just -- 13 A. Okay. I mean, this -- this was -- 14 this was one of the sort of issues that existed 15 between Hugh Burnaby-Atkins and myself as to 16 who was actually doing the operational 17 due diligence around Madoff. 18 He had instructed Jonathan to prepare 19 a report, which I think you have later on. 20 It's in one of the -- the documents that was 21 produced. I think it's July -- I think it was 22 dated July, that he -- that he actually produced 23 this report, which covers sort of our knowledge of 24 Madoff up to that point. 25 And, again, you know, we -- when I spoke</p>

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<p>1 to Manuel about this, it was unclear as to exactly 2 what the remit of this report was going to be; you 3 know, to what extent was it going to deal with 4 operational due diligence issues which, frankly, 5 I didn't really consider him to have the expertise 6 to -- to deal with. 7 Q. Why not? 8 A. Because he wasn't qualified to deal 9 with them. 10 And that that should really be something 11 that -- that I needed to deal with. 12 So -- but -- but Hugh was -- 13 was determined to go ahead and -- and do the 14 report, and -- and, to the extent that it covered 15 investment issues and was sort of a catch-all, 16 fine, but -- but, to a large extent, the -- 17 the publication of that report by Jonathan, to a 18 large extent, was what started my decision process 19 to leave Optimal. 20 Q. Why -- why do you -- why did you 21 believe that Jonathan Clark was not qualified to 22 write a report on operational due diligence? 23 A. Well, he's not a chartered 24 accountant; he's not run businesses in financial 25 difficulty and, therefore, doesn't necessarily</p>	<p>1 So he would -- he would try and smooth 2 things through. He was always -- you know, he -- 3 he didn't really want conflict. 4 In many ways, you know, I think that was 5 the problem with -- with Optimal: they were 6 just -- their -- their Achilles heel, in my view, 7 was that they were just very nice people who 8 didn't want to upset others. 9 Q. You mentioned that this report was 10 the beginning of your process of -- of leaving 11 OIS; is that more or less correct? 12 A. Yes. 13 Q. What did you mean by that? 14 A. Well, when I joined Optimal, 15 I thought I was going to build what I would term a 16 world-class operational due diligence team. 17 I mean, here was a -- a huge bank with the 18 potential to be a huge investor. 19 So, you know, I -- I was looking at it as 20 being an extremely exciting challenge, but I was 21 slowly coming to the realization that -- because 22 they were so worried about these relationships and 23 how they were going to handle them, that I wasn't 24 really going to be able to do a proper job in the 25 way that I was comfortable in doing it.</p>
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<p>1 understand some of the operational issues that one 2 would need to look at. 3 Q. And how did you come to this 4 conclusion? 5 A. Because he wasn't a chartered 6 accountant and didn't have the relevant 7 experience. 8 Q. You said you discussed this report 9 that Jonathan was going to prepare with Manuel; 10 correct? 11 A. Yeah. 12 Q. And what did you discuss? 13 A. Well, just whether it was 14 appropriate or not, and I think, again, there are 15 emails in the pack that discuss the 16 appropriateness of what I thought about his 17 involvement in it. 18 Q. And -- and what was Manuel's view as 19 to the appropriateness of Jonathan Clark writing 20 this report? 21 A. Well, I think -- I think Manuel's 22 approach to most things, when there was antagonism 23 of this sort, was to say, "Oh, well, you know, 24 let's -- let's get it done. We can read it and 25 then have a look at it later".</p>	<p>1 But, as I explained to you earlier, 2 it took me almost five and a half years to get to 3 a stage where I was more or less -- not totally, 4 but more or less -- comfortable in my previous 5 job, so I felt I was very much at the start of a 6 journey here, and I was still keeping an open 7 mind, but if I -- if I had to sort of point to a 8 marker, it would be that report because -- well, 9 I mean, there were certain things in that report 10 that I -- I took objection to. 11 For example, the report, at its very 12 beginning, says that their view was that Madoff 13 was a well-run and efficient organization, to 14 which my response was, "On what basis? You know, 15 what evidence do we have for it? What has 16 Jonathan actually read and seen that leads him to 17 that conclusion", because I'm not in a position to 18 say. I wasn't in a position to say it was badly 19 run, but I wasn't in a position to say it was well 20 run either. 21 Q. Did you discuss this disagreement 22 about Jonathan's conclusion regarding Madoff being 23 well run with Manuel? 24 A. Oh, yes, and with the management 25 committee and with the investment committee.</p>

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<p>1 I discussed it with a lot of people. I was 2 incensed at the time. 3 Q. What did you say? 4 A. Well, I just said that -- 5 well, again, I think my emails will probably give 6 a better account of what I said, because I -- 7 I just -- I was very annoyed that assertions were 8 being made in it that I felt we couldn't 9 substantiate. 10 Q. Did you feel those assertions were 11 incorrect? 12 A. I felt they were unsubstantiated. 13 Q. And when you say "unsubstantiated", 14 what do you mean? 15 A. Well, I couldn't prove them one way 16 or the other. 17 Q. And did you explain to Manuel that 18 some of the assertions in the report were 19 unsubstantiated? 20 A. Yes. 21 MR. DANON: Objection to form. 22 BY MR. BLEICHMAR: 23 Q. And what did -- 24 A. Sorry. 25 Q. And what did Manuel say with respect</p>	<p>1 MR. BLEICHMAR: I'm going to mark as 2 exhibit 4 a seven -- a nine-page report entitled 3 "Madoff Securities" that was filed with the court 4 in the United States as -- as docket number 46-1. 5 (Exhibit 4 marked for identification.) 6 BY MR. BLEICHMAR: 7 Q. Is this the report that you were 8 referring to and that we were just talking about, 9 Mr. Jaitley? 10 A. Yes, it is. So if you go to the 11 second page, "View": 12 "Despite the above, we believe the 13 organization is efficiently and professionally 14 managed." 15 Q. And you -- you reviewed this report 16 during your employment at Banco Santander? 17 A. I did. 18 Q. And is there any reason to believe 19 that this copy of this report is not authentic? 20 A. No. 21 Q. Do you have an understanding as to 22 whether this report is the final complete version 23 and not a draft of this report? 24 A. I think it was a final. 25 Q. And what leads you to believe that</p>
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<p>1 to that? 2 A. I think it was his usual response: 3 "Well, you know -- well, you know, that's his 4 view. He doesn't really have the experience. 5 Don't worry. It's just -- you know, it's a 6 collation. You know, we need to move forward on 7 it". 8 Manuel didn't want a major confrontation 9 over it. The issue was of concern to me 10 because -- what I was worried about was that the 11 marketing people would then take this report and, 12 you know, it was one of the -- the bases of the 13 argument that we ran when the management committee 14 were concerned about the reports that I was 15 producing, when they were saying, sort of, 16 "Where are -- where are all these reports that you 17 need -- you know, that you should have produced by 18 now?" What I was saying is, "Well, it's a 19 question of substance over form". 20 I think they were more concerned about 21 the form of having reports there that they could 22 then produce to clients and say, you know, "This 23 is what we do", and I was more concerned about the 24 substance of what we'd actually done. So there 25 were discussions on it.</p>	<p>1 it was a final report? 2 A. When it was issued, because it would 3 have been issued as a final report. 4 THE EXAMINER: Where do I find that? 5 Where do I find when it had been issued? 6 THE WITNESS: I -- I think you will find 7 right at the top right-hand corner it says 8 July 2006. 9 THE EXAMINER: Thank you. 10 THE WITNESS: I think -- even though the 11 date is July 2006, it might have been issued 12 slightly later, but I -- yeah, passage of time. 13 THE EXAMINER: Were drafts stamped 14 "Draft" across the page? 15 THE WITNESS: Not necessarily. I mean, 16 sometimes you might have just sort of had an -- an 17 email attachment which said, you know, "Attached 18 is a draft". 19 BY MR. BLEICHMAR: 20 Q. And what other areas of this report 21 do you believe are unsubstantiated? 22 MR. DANON: Objection to form. 23 THE EXAMINER: Have you had a chance to 24 review this recently? 25 THE WITNESS: Yes. These are documents</p>

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<p>1 that were sent to me.</p> <p>2 Well, I mean, I think you will, again,</p> <p>3 find comments that I have made in emails, but if</p> <p>4 you go to page 5, "Regulation", where they say:</p> <p>5 "Madoff Securities suffering or</p> <p>6 committing an irregularity is possible but</p> <p>7 remote."</p> <p>8 Well --</p> <p>9 BY MR. BLEICHMAR:</p> <p>10 Q. Where is that, excuse me?</p> <p>11 A. Page 5, under "Regulation", again,</p> <p>12 "View".</p> <p>13 Q. Right.</p> <p>14 A. So he was expressing a view saying</p> <p>15 that Madoff Securities suffering or committing an</p> <p>16 irregularity is possible but remote.</p> <p>17 I was, again, saying, "Well, on -- you</p> <p>18 know, on what basis?" You've got -- in fact,</p> <p>19 I mean, in terms of the irregularities, we had the</p> <p>20 NASD evidence by then that they'd been fined.</p> <p>21 I mean, okay, it was \$500, or whatever it was, or</p> <p>22 \$2,000, but, you know, they had been fined.</p> <p>23 So, again, it was really a question of</p> <p>24 sort of some of the assertions that he made that</p> <p>25 I had a concern, because I was saying, "Well,</p>	<p>1 THE WITNESS: These were all risks that</p> <p>2 we had identified in the other report as well.</p> <p>3 BY MR. BLEICHMAR:</p> <p>4 Q. Do you have an understanding as to</p> <p>5 what work Jonathan Clark did to prepare this</p> <p>6 report?</p> <p>7 A. Well, he'd obviously been present at</p> <p>8 the meeting that I had been at. He had access to</p> <p>9 the -- the previous reports.</p> <p>10 I think, by then, he had also had a</p> <p>11 conversation with the auditors, which was, again,</p> <p>12 another area that I took exception to, because</p> <p>13 I didn't think that Hugh and Jonathan should be</p> <p>14 the people having the discussion with the</p> <p>15 auditors. They didn't speak the same language,</p> <p>16 they didn't really understand what the issues</p> <p>17 were.</p> <p>18 I mean, some of the questions that they</p> <p>19 actually asked on the call that I came into at the</p> <p>20 tail end of, I -- I really didn't like, because it</p> <p>21 just clearly demonstrated that they weren't --</p> <p>22 you know, they -- they were asking questions on</p> <p>23 U.S. GAAP.</p> <p>24 I wanted to understand sort of how this</p> <p>25 person was actually conducting the audit. You</p>
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<p>1 on -- on what basis? You know, what -- what basis</p> <p>2 do you have to form these views?", because</p> <p>3 I didn't believe that we had enough evidence at</p> <p>4 that point to form a view either way.</p> <p>5 Q. Turning to the first page of the</p> <p>6 report, do you see halfway down that page, it</p> <p>7 says:</p> <p>8 "Summary areas of potential risk."</p> <p>9 A. Yep.</p> <p>10 THE EXAMINER: Sorry, which page are we</p> <p>11 on?</p> <p>12 MR. BLEICHMAR: The first page.</p> <p>13 THE EXAMINER: Oh, the first page.</p> <p>14 MR. BLEICHMAR: The front page.</p> <p>15 THE EXAMINER: Yes.</p> <p>16 MR. BLEICHMAR: "Summary areas of</p> <p>17 potential risk".</p> <p>18 BY MR. BLEICHMAR:</p> <p>19 Q. And do you see there's a number of</p> <p>20 bullet points there?</p> <p>21 A. Yes.</p> <p>22 Q. Do you agree that those bullet</p> <p>23 points generally reflect the summary areas of</p> <p>24 potential risk?</p> <p>25 MR. DANON: Objection to the form.</p>	<p>1 know, for example, what -- what sample size was he</p> <p>2 using, how was -- how was he approaching it, what</p> <p>3 level of materiality.</p> <p>4 So those were the sort of things I would</p> <p>5 have expected somebody to be raising in that</p> <p>6 conversation.</p> <p>7 Q. Did you raise those?</p> <p>8 A. So -- no, I didn't, because I never</p> <p>9 got a chance to -- to speak to him subsequently</p> <p>10 because we were just given that -- those --</p> <p>11 I think there were two windows that we were</p> <p>12 given by Madoff, because Madoff didn't want</p> <p>13 us approaching the auditors directly, and</p> <p>14 he wanted to be present whenever the conversations</p> <p>15 occurred.</p> <p>16 So, you know, I lost that opportunity,</p> <p>17 and I was -- you know, I raised that with Manuel,</p> <p>18 because I felt that was a wasted opportunity.</p> <p>19 Q. And by "the auditors", you mean</p> <p>20 Madoff's auditors; correct?</p> <p>21 A. Yes, that's right.</p> <p>22 Q. And does the name Fricling &</p> <p>23 Horowitz --</p> <p>24 A. Yes.</p> <p>25 Q. -- refresh your recollection?</p>

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<p>1 A. Yes, that's right.</p> <p>2 Q. Friehling & Horowitz were</p> <p>3 the auditors for Madoff?</p> <p>4 A. It was David Friehling, I think was</p> <p>5 his name, who was the person that we spoke to.</p> <p>6 THE EXAMINER: Look at the bottom of</p> <p>7 page 6.</p> <p>8 THE WITNESS: Yes, David Friehling,</p> <p>9 thank you.</p> <p>10 BY MR. BLEICHMAR:</p> <p>11 Q. And you were never able to speak to</p> <p>12 Mr. Friehling with respect to Madoff?</p> <p>13 A. No, I just --</p> <p>14 MR. DANON: Objection to the form.</p> <p>15 THE WITNESS: I just had a -- I came</p> <p>16 into the tail end of a conference call, and</p> <p>17 I think you will again see emails setting out the</p> <p>18 objections I had at the time on it.</p> <p>19 BY MR. BLEICHMAR:</p> <p>20 Q. You also prepared a report on</p> <p>21 Madoff; correct?</p> <p>22 A. Yes.</p> <p>23 Q. And why did you prepare a report,</p> <p>24 given that Jonathan Clark had already prepared one</p> <p>25 himself?</p>	<p>1 assertions, so what we've done is we've identified</p> <p>2 certain risks and we need to get comfortable</p> <p>3 around those risks, and to the extent that we are</p> <p>4 not able to get comfortable around those risks, we</p> <p>5 need to make sure that investors are aware of what</p> <p>6 those risks are".</p> <p>7 Again, you know, there's no magic to</p> <p>8 operational due diligence. I mean, if you tell</p> <p>9 your investor that, you know, you're investing</p> <p>10 blind, then, you know, it's up to the investor to</p> <p>11 make that decision, so long as it's disclosed.</p> <p>12 Q. Was it your view that the investors</p> <p>13 were not aware of the risks in investing with</p> <p>14 Madoff?</p> <p>15 A. Well, I had a number of discussions</p> <p>16 in relation to this with counsel, and one of the</p> <p>17 things that we looked at was the extent to which</p> <p>18 there were disclosures in the explanatory</p> <p>19 memorandum.</p> <p>20 MR. DANON: I think I object to</p> <p>21 privilege --</p> <p>22 THE EXAMINER: "With counsel", did you</p> <p>23 say?</p> <p>24 THE WITNESS: Sorry?</p> <p>25 THE EXAMINER: "With counsel", did you</p>
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<p>1 A. Well, my report had been prepared</p> <p>2 earlier. My report clearly raised issues that</p> <p>3 I had a problem with, as are set out.</p> <p>4 This report was, I suppose, to allay some</p> <p>5 of those fears, to say, you know, we'd -- we'd</p> <p>6 done some more work.</p> <p>7 Q. "This report" meaning</p> <p>8 Jonathan Clark's report?</p> <p>9 A. Jonathan Clark's report. And that</p> <p>10 was, again -- like I said, this was the marker for</p> <p>11 the point when I started thinking that it was time</p> <p>12 for me to leave and -- but I wasn't going to</p> <p>13 get -- be able to cover the work that I needed to</p> <p>14 do in the way that I wanted to do it.</p> <p>15 Q. When you said "this report",</p> <p>16 referring to Jonathan Clark's report, "was to</p> <p>17 allay some of those fears", what do you mean by</p> <p>18 that?</p> <p>19 A. Well, because what it was saying is,</p> <p>20 "Well, we've identified some potential risks, but,</p> <p>21 really, guys, we don't -- there is nothing to</p> <p>22 worry about because it's all very well run and,</p> <p>23 you know, any possibility of any problems are</p> <p>24 fairly remote", and what I was saying is, "Well,</p> <p>25 you know, we need more of a basis to make those</p>	<p>1 say?</p> <p>2 MR. DANON: -- to the extent he's</p> <p>3 getting into conversations with counsel.</p> <p>4 THE EXAMINER: I think --</p> <p>5 MR. DANON: We object on privilege.</p> <p>6 THE EXAMINER: I don't think we want to</p> <p>7 go down that particular route, of conversations</p> <p>8 you had with counsel.</p> <p>9 THE WITNESS: Okay.</p> <p>10 BY MR. BLEICHMAR:</p> <p>11 Q. Putting aside your conversations</p> <p>12 with counsel, was it your view that the investors</p> <p>13 were not aware of the risks in investing with</p> <p>14 Madoff?</p> <p>15 MR. DANON: I think I would lodge the</p> <p>16 objection on privilege to the extent it requires</p> <p>17 him to -- in order to answer, it requires him to</p> <p>18 divulge or disclose any conversations with</p> <p>19 counsel.</p> <p>20 BY MR. BLEICHMAR:</p> <p>21 Q. Correct. Putting aside any</p> <p>22 conversations --</p> <p>23 THE EXAMINER: You are being asked about</p> <p>24 your own view, quite independent of any</p> <p>25 discussions you had with counsel. If you can</p>

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<p>1 restrict your answer to --</p> <p>2 THE WITNESS: But -- but my view was</p> <p>3 determined by what counsel had told me.</p> <p>4 THE EXAMINER: You've got a problem</p> <p>5 there, Mr. Bleichmar.</p> <p>6 BY MR. BLEICHMAR:</p> <p>7 Q. Let's take a step back. Did you</p> <p>8 have a view before speaking with counsel?</p> <p>9 A. Yes, I did.</p> <p>10 Q. And what was your view before you</p> <p>11 spoke with counsel?</p> <p>12 A. I -- I felt that the disclosures</p> <p>13 didn't go far enough.</p> <p>14 Q. And when you say the disclosures</p> <p>15 didn't go far enough, what do you mean by that?</p> <p>16 A. Well, there were assertions about</p> <p>17 what we had done and what we would be doing that</p> <p>18 I was not comfortable with.</p> <p>19 THE EXAMINER: Do you mean in this</p> <p>20 report?</p> <p>21 THE WITNESS: Sorry?</p> <p>22 THE EXAMINER: Do you mean in this</p> <p>23 report?</p> <p>24 THE WITNESS: No, sorry, in the --</p> <p>25 in the offering document --</p>	<p>1 Q. And you prepared it at the time of</p> <p>2 your employment with Banco Santander; correct?</p> <p>3 A. During my time, yes.</p> <p>4 Q. During.</p> <p>5 A. Yes.</p> <p>6 Q. Any reason to dispute the</p> <p>7 authenticity of this document?</p> <p>8 A. No.</p> <p>9 Q. And approximately when did you</p> <p>10 prepare this document?</p> <p>11 A. Well, this is -- the -- the meeting,</p> <p>12 the visit, took place in February, February 2006,</p> <p>13 as it says here, so it was sometime between then</p> <p>14 and July 2006, when Jonathan's report came out.</p> <p>15 So I -- I find it hard to remember now</p> <p>16 the exact date when it came out.</p> <p>17 Q. That's fine. But you remember</p> <p>18 that, relative to Jonathan Clark's report, you</p> <p>19 completed this report, exhibit number 5, before</p> <p>20 Jonathan Clark's report?</p> <p>21 A. Yes.</p> <p>22 Q. And why do you have that</p> <p>23 recollection?</p> <p>24 A. Because of how annoyed I was when</p> <p>25 this finally got prepared.</p>
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<p>1 THE EXAMINER: Oh, these were these --</p> <p>2 THE WITNESS: -- that investors</p> <p>3 received.</p> <p>4 THE EXAMINER: These were the</p> <p>5 explanatory memoranda?</p> <p>6 THE WITNESS: That's right. So it was</p> <p>7 basically explaining the basis on which the</p> <p>8 investments were being made.</p> <p>9 MR. BLEICHMAR: Let me mark as exhibit 5</p> <p>10 a document that states "Optimal Investment</p> <p>11 Services" on the top. It was filed with the</p> <p>12 court. It has the -- the headline "Page 24 of</p> <p>13 133".</p> <p>14 (Exhibit 5 marked for identification.)</p> <p>15 BY MR. BLEICHMAR:</p> <p>16 Q. And let me ask you whether you</p> <p>17 recognize this document?</p> <p>18 A. Yes, I do.</p> <p>19 Q. And what do you recognize this</p> <p>20 document to be?</p> <p>21 A. It's a document that I prepared.</p> <p>22 Q. And did you prepare it as part of</p> <p>23 your duties and responsibilities while you were</p> <p>24 employed at Banco Santander?</p> <p>25 A. That's correct.</p>	<p>1 Q. When you say "this", you're</p> <p>2 referring to Jonathan Clark's report?</p> <p>3 A. Sorry, Jonathan Clark's 2006 report.</p> <p>4 I'll get used to it.</p> <p>5 Q. Did you distribute -- let me strike</p> <p>6 that.</p> <p>7 Is it fair that we refer to exhibit</p> <p>8 number 5 as "Mr. Jaitley's report"?</p> <p>9 A. Yes.</p> <p>10 Q. And we refer to Jonathan Clark's</p> <p>11 report as "the Clark report"?</p> <p>12 A. Yes, that's fine.</p> <p>13 Q. That way we can keep it straight.</p> <p>14 A. Yes, that's fine.</p> <p>15 Q. Did you -- did you share or send</p> <p>16 the -- the Jaitley report to anyone?</p> <p>17 A. Yes, it was sent to the entire</p> <p>18 analyst team.</p> <p>19 Q. And who would that include?</p> <p>20 A. Hugh Burnaby-Atkins, Jonathan Clark,</p> <p>21 the analyst team in Geneva, Manuel.</p> <p>22 Q. And do you know approximately when</p> <p>23 you distributed it to those individuals?</p> <p>24 A. I can't recall now, but there should</p> <p>25 be an email that gives you the exact date.</p>

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<p>1 Q. Do you believe that you distributed 2 it before Jonathan Clark's report was issued? 3 A. Yes, I believe I did. 4 Q. Did you send the report to anybody 5 outside of OIS? 6 A. Yes, I did. 7 Q. Who did you send it to? 8 A. To Grupo Santander, at their 9 request. 10 Q. And who specifically at 11 Grupo Santander? 12 A. Amadeo Pascual Reynes. 13 Q. Anybody else outside of OIS? 14 A. No, I don't think so. I -- I would 15 have -- again, one of the problems that I had was 16 the -- who got to see these reports, because 17 sometimes people were quite free as to who they 18 showed it to, and I -- I didn't think that even 19 investors should really get to see some of these 20 internal reports. 21 Q. Do you have any understanding as to 22 whether Amadeo Pascual Reynes distributed this 23 report to other individuals at Grupo Santander? 24 A. I have no idea. 25 Q. Do you know if anybody else,</p>	<p>1 I wanted to get comfort that -- that 2 Bernie Madoff was doing what he said he was going 3 to be doing. 4 So, you know, in -- in terms of the 5 actual trading mandate, I wanted to make sure that 6 he wasn't in breach of -- I mean, one of the 7 things, for example, in this report that is noted 8 is the issue -- when we met Bernie Madoff, he said 9 that he traded 45 of the S&P 500 stocks -- S&P 100 10 stocks, sorry, and when we spoke -- so when we 11 spoke to him he said 45, and when you look at the 12 documents it says 35. 13 So, you know, I didn't know whether it 14 was in compliance or not, because, you know, which 15 one was right? Had it changed? And if it had 16 changed, to what extent had it changed and who 17 had authorized the change and agreed it and where 18 was the documentation around it? So there was 19 that. 20 There was the issue that we couldn't 21 really do any exercises ourselves to establish 22 whether there was any fraud or misrepresentation 23 on the process. 24 We were obviously relying on one person 25 and his word, and -- I mean, you know, if you</p>
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<p>1 other than Amadeo Pascual Reynes, saw this report 2 at Grupo Santander? 3 A. Well, I would have thought at least 4 Pepe Mercado, who was his boss, would have seen 5 it, because we did have a discussion around it 6 when I met him. 7 Q. And what did you discuss with 8 Mr. Mercado when you met him, with respect to 9 the -- the Jaitley report? 10 A. I can't recall the precise details, 11 but it would have been essentially highlighting 12 the conclusions that I'd -- I'd reached and why 13 I'd reached them and what the proposed actions 14 were and what I was planning to do in relation to 15 it. 16 Q. And could you summarize what those 17 conclusions were? 18 A. Well, as they're set out, the -- 19 the primary issue that I had was the contractual 20 documentation. I had a concern about that. 21 I also wanted comfort around the 22 segregation of the assets, because, again, the way 23 I was looking at it is, to the extent that there 24 was a blow-up, I wanted to be able to trace back 25 in to those assets to claim them to be ours.</p>	<p>1 think about it, to a large extent, this report is 2 based on a conversation that we had with a -- a 3 gentleman for two hours, basically telling us what 4 he thought -- you know, what his view was of how 5 they did things, but I only had his word for it, 6 and, as history shows, it was only his word, and 7 nothing else. 8 Q. Did you ever meet Madoff again? 9 A. I only met him the once. But 10 I spoke to him probably, I think, twice after that 11 on the phone, to sort out -- the legal contractual 12 stuff, and that was, again -- it -- it was, to a 13 large extent, I think counsel throwing their hands 14 up and saying, "Right. You know, why don't you 15 just have a discussion directly with him about the 16 things you want". 17 Q. Let me direct your attention to -- 18 if you look at the top right of each page, it says 19 "Page X of 133"? 20 A. Yes. 21 Q. If you go to page 36 of 133. Do you 22 see between sections G and H there is an 23 underlined, bolded paragraph? 24 A. Yes. 25 Q. Would you mind reading it out loud?</p>

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